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LABOUR CODE VOL. III

In the first part of *Labour Code* Vol. III. the commentaries on Factories Act, 1948 is published. As the Provincial Governments have not framed the rules we have not been able to include them in the first part of this volume and the rules will be confirmed after 30th June 1949. It is decided by the publishers taerefore that the second part to this volume containing the rules made by all the provinces under the Act, will be published under the title *Labour Code Vol III Part II* Therefore, the purchasers of Labour Code Vol. III Part I will only get the second Part on payment of the price.

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LABOUR CODE

Vol. III

Part I

The Factories Act, 1948

(Act No. LXIII of 1948)

with

Full Text, Exhaustive Commentaries

&

Latest Case Law

By

CHAMPAKLAL C. BHATT. B. A. LL. B.

Joint Author, Labour Code Vol. I.

&

CHANDRAKANT T. DARU. B. SC. LL. B.

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TO

that great band of pioneers who saw the human aspect of work in factories and whose labours to-day lay upon mankind the obligation to deepest reverence.

PREFACE

A compilation of the Factories Act with legal commentary, such as the present, hardly needs any apology. The Act embraces an overwhelming proportion of the working population of our country, and as such its importance can hardly over-emphasised. The Act makes elaborate provisions for the health, safety and welfare of the workers and therefore it is necessary for every employer, worker, and a trade-unionist to study it carefully in order to make sure that these provisions do not remain unenforced for want of proper understanding or knowledge of their implications. We can therefore legitimately hope that this book will supply a real need of the community.

We have tried to incorporate into the Act as many important decisions of the various High-Courts as we could lay our hands upon. We have taken the liberty of quoting extracts from the reports of the Rege Committee and the Bhore Committee, wherever such extracts have appeared to be useful in understanding the reasons underlying various provisions of the Act. We have also added appendices containing information, which we hope will be found useful by all concerned. An introduction tracing the growth and evolution of the factory legislation in U.K. and India has also been inserted with the hope that it will enable the readers to see that Act in its true historical perspective.

We would like to mention that we were very much encouraged in our work by the very good response received by the first two volumes of the Labour Code (namely Bombay Industrial Relations Act, Industrial Disputes Act (Central) and Payment of Wages Act) of which this forms a third volume.

We are aware of the shortcomings of our effort. The work had to be rushed through and we could not afford to wait till the Provincial

Governments framed and published the rules under the Act. We have therefore not been able to give references to appropriate rules in the comments under different sections. To that extent the comments can be said incomplete. The rules, however, will be treated and if necessary commented upon in Part II of the book.

We take this opportunity to thank the publisher Mr. C. C. Vora who has undertaken to publish a series of books relating to Labour laws. We are furher indebted to Mr. D. M, Thaker, B. A.. of the Ahmedabad Mazdoor Mandal for giving valuable suggestions and helping in many other ways. Thanks are also due to Mr. S. M. Tailor LL.B. for preparing the index.

Any suggestions likely to add the usefulness of the book and to remove its defects and shortcomings will be most welcome.

AHMEDABAD,
DATED 5th MARCH, 1949.

C. C. BHATT.
C. T. DARU.

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RULES UNDER THE ACT

By **Government of Bombay.**

The Labour Department, Government of Bombay, on 5th March 1949, has issued notification. Nos, 44/48/I and 44/48/II under the Act. These notifications are published at page 216 of the Bombay Government Gazette Part IV A dated 10th March 1949. These notifications, mainly, contain a draft of the rules which the Government of Bombay proposes to issue in exercise of the powers conferred upon it by various provisions of the Factories Act 1948 (LXIII of 1948). Such draft rules are required to be published under the provisions of Section 115 of the Act for the information of all persons likely to be affected thereby. Persons and institutions concerned could submit objections and suggestions to these draft rules for the consideration of the Government of Bombay.

After 10th June 1949, i. e. three months after its first publication these draft rules would be considered by the Government of Bombay along with any objections or suggestions submitted to it. These considered rules would then **again be** issued and **published** for guidance, by the Government of Bombay in the Bombay Government Gazette. These *pacca* rules would then be only operative and binding. These rules will appear as Part II of this Book.

31-3-49 **'Authors'**

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PART I.

LABOUR CODE

VOL. III

INTRODUCTION

Early History of Factory Legislation in United Kingdom and India

The factory laws of almost all the countries drew their inspiration from the English factory laws. It was in England that the need for such laws was first realised. With the Industrial Revolution began the increased use of machinery in various processes of production. This machinery though designed to free men's bodies and to increase their living standards tended in many cases to injure their bodies, to depress their wages and to force entire families to work in factories from 12 to 17 hours a day. The new machinery and minute division of labour did away with the demand for the old craft skill of many artisans. With machines the work became so light that women and children could be employed on a large scale in the factories. Of course, children had worked long hours in unhealthy workshops even in the old pre-machine domestic system. But now their employment was concentrated and made more visible. In the thirties of the 19th century almost half the factory workers in England were children under 18 years of age. About 55 per cent of all factory employees were women and nearly one half of the female employees were under 18 years of age.

The new machinery had a number of other effects. Factory owners wanted to operate their costly equipment as continuously as possible in order to keep down the overhead cost for unit of output and to get as much as possible out of the machinery before a new invention made it obsolete. The normal working day for women and children as well as men was from twelve to fourteen hours for six days a week and at rush seasons, factories sometimes ran day and night on one shift. Children who in rush seasons worked eighteen hours a day with only four hours for sleeping often fell asleep at meals with the victuals in their mouths. A West Indian slave master upon hearing of the hours children worked in English factories remarked: "I have always thought myself disgraced by being the owner of slaves but we never in the West Indies thought it possible for any human being to be so cruel as to require a child of nine years old to work twelve and a half hours a day and that you acknowledge is your regular practice."

Working weeks from seventy two to one hundred and eight hours for children tended to deform their bodies and legs and made workers old at forty. To enforce child labourers to perform their stint, foremen sometimes, strapped them. Children of six, seven and eight years of age

worked in coal mines where for twelve or fourteen hours a day, girls in their teens crowling on all fours would drag a car or tub of three hundred or four hundred pounds of coal by a chain attached to a leather band around their waists. Economists in estimating the gain from the new factory system generally failed to allow for the suffering and the wear and tear on human bodies that such toil at tender ages involved. It was the literary writers like Dickens, Carlyle, Coleridge, Charles Kingsley, Byron, Thomas Hood (Song of the shirt) who pointed to the human and inhuman aspects of the early factory system.

These horrid and abominable conditions of work attendent upon the factory system, roused the conscience of the society and it began to be gradually realised that the intervention of the State was necessary to regulate labour in factories. Upto that time, however, it was believed that the general welfare of the community was best served when the Government kept its hand off economic matters and permitted each individual to persue his own selfish interests subject only to the forces of competition in a free market. They were convinced that Government action in the economic realm was both futile and vicious in that it would be contrary to "natural" law and "natural" forces.

This philosophy of *laissez faire*-let alone-was, however, discarded and it was felt that an Industrial Code was necessary to control the free play of individual action. The first factory Act was passed in 1802 and it applied only to poor house children who were bound out by the State to cotton manufacturers.

It did not apply to most child labour which consisted of "free" children living with their parents. It limited the working time of children above nine years to twelve hours during a day time and required that the employer should provide his pauper labourers with some schooling. In 1819 the Cotton Factories Regulation Act applied to "free" children the provisions relating to hours of work contained in the 1802 Act forbidding the employment of children under nine and limiting to twelve the hours of children nine to sixteen. Opposition to this Act was led by the economist Lauerdale who maintained that "the employer was the person most likely to be acquainted with different degrees of strength possessed by his workmen and most likely to avoid over working them with a view to his own advantage." In 1833 an Act extended the prohibition of the 1819 Act to all Textile Trades and also limited to eight a day hours of children between nine and thirteen years of age. For the first time a staff of Inspectors was created to see that these Acts were enforced.

In 1842 the State proceeded to interfere with the free market for the labour of adult women by excluding them from work in underground mines. An Act passed in 1844

(1) provided for the proper fencing of machinery for workers' safety;
(2) restricted the labour of children to a half day requiring their attendance at school during the other half day and
(3) limited the hours of adult women to twelve a day also prohibiting night work for them.

It was in opposition to such limitation of the working day by legislation that Nassau Senior, Professor of Political Economy at Oxford attempted to "prove" that hours could not be reduced further because in a mill employing persons under eighteen which by law could operate only eleven and a half hours' a day, "the whole net profit is derived from the last hour", so that a reduction of a working day by one hour would destroy the entire net profit.

In 1847 the "Ten Hour Act" was passed which restricted to working day of young persons and women to ten hours. With its passage, the chief outlines of the Factory Code in England were formed.

Credit for the passage of the Factories Acts was partly due to the land owning aristocracies, the Tories, who took this means of revenge against the capitalists and mill owners who had aided in the repeal of high tariff on agricultural products. But it should be admitted that many businessmen themselves revolted against the doctrine of *laissez faire* when they saw its effects in the deformed bodies of children, the impairment of health and life and the poverty of hard working families. As time passed opposition to the Factories Acts gradually withered away. The evil effects on British industry predicted by those who opposed the passage of the Acts failed to materialise and many of the strongest opponents of the factories legislation eventually acknowledged its benefits.

Actually the factories Acts proved advantageous from an economic point of view. Evidence from studies by factory Inspectors after 1844 proved that "the output of Eleven hours work might be greater than that of twelve" and that long hours, far from being productive resulted in spoiled work, inefficiency and breakdowns. By 1860 public opinion had completely changed; the belief that shorter hours necessarily meant lessened production had long been exploded and the Ten Hour Bill of 1847 was held as "something of which all parties might well be proud." When in 1867 the proposal was made to extend the operation of the Factory Acts from Textile factories to all factories and workshops, it

"was received with general favour" and an Act to that effect was passed in 1867 without any opposition.

Since then the legislation has continued to take long strides in its onward march practically without any serious opposition from anyone on fundamental matters.

The beginning of Factory Legislation in our country dates back to 1881. Prior to that an agitation had developed demanding a control of working conditions which had led to the appointment of a Factory Commission in 1875. The first Act was based mainly on the recommendations of this commission. Under this Act any premises using machinery driven by power and employing one hundred or more persons for four or more months in a year was defined to be a factory. It prohibited the employment of any child under 7 and limited to nine a day the hours of work for children. A 'child' meant a person below the age of twelve. It did not put any limit to the working hours of adult men or women. It therefore failed to produce any marked or visible effect upon the conditions in factories. It was felt that the protection afforded to children was inadequate and that women needed special protection. Agitation on these lines resulted in the appointment of Bombay Factory Commission in 1884 and a Factory Labour Commission in 1890.

The conditions of work prevailing then were no better than those prevailing in England in the closing years of the 18th century. Mr. R. F. Wadia himself a business magnate giving evidence before the Bombay Factory Labour commission in 1885 stated: "In ordinary seasons, that is when work is not very pressing, the engine starts between four and five a. m., and stops at seven, eight or nine p. m., without any stoppage during the day. The hands work continuously all these hours and are relieved by one another for meals. In busy seasons, that is in March and April the gins and presses sometimes work both night and day, with half an hour's rest in the evening. *The same set continues working day and night for about 8 days and when it is impossible to go on any longer, other sets of hands are procured from Bombay*..... Both men and women come to the factories at 3 a. m. as they have no idea of the time and they wish to make sure that they are at the factory by the time it opens, that is 4 a. m..... There is no change of hands except at meal times. The hands that work from 4 a. m, to 10 p. m. are paid from 3 to 4 annas a day. All the factories pay at this rate. Sometimes we pay our hands six pies as bonus..... *Those working these excessive hours frequently died.*"

The findings of the two commissions referred to above led to the passing of an amending *Act in 1891*, which defined a factory to be any premises in which fifty or more persons were employed, and the local governments were empowered to extend the scope of the Act to work-places employing twenty persons or more. A child was defined to be a person below the age of 14 and the employment of children under nine years was prohibited. Hours of work for women and children were limited to 11 and 7 day, respectively.

After 1891 then followed a slump in Cotton Textile Industry, which ended by about 1904 which saw a boom in the industry. By that year the jute industry had also advanced. These and several other factors caused a shortage of labour and the Government of India appointed a special officer to investigate into the causes of the shortage of labour in some of the industrial centres of U. P., Bihar and Bengal. That officer reported that the shortage was due to the fact that workers found this strain of working long hours very heavy. The matter was also investigated by a Textile Committee in 1906 and an All India Factory Labour Committee in 1907. The latter committee, however, was strongly against any drastic legislative action. Only one member Dr. T. M. Nair advocated strong legislation in a minute of dissent. As a result of this a new Factory Act was passed in 1911 which reduced the limit of working hours for children to six a day and also prescribed a limit of twelve hours a day for adults. Women and children were prohibited from employment in certain dangerous processes and prohibited to work between 7-0 p. m., and 5-30 a. m. A fitness certificate was required for children before they were employed.

Then came the first World War and the treaty of Versailles which provided for International Labour Organisation. A conference held in Washington under the auspices of the I. L. O. adopted several conventions relating to hours of work etc. The Government of India ratified the convention regarding hours of work in 1921. These conventions had specially provided that "the principle of 60 hour-week shall be adapted for all workers in the industries at present covered by the Factories Acts administered by Government of India." The Factories Act of 1922 gave legislative sanction to these conventions. Under this Act a factory was defined to be any premises using power driven machinery and employing twenty persons or more. Local Governments were empowered to lower the limit to ten persons and to include undertakings working without the aid of power. A child was defined as a person below fifteen years of age. Children under twelve were prohibited from being employed. The hours of work for

children were limited to six a day with half an hour's interval for these working for more than five and half hours. The hours of work for adults were limited to eleven a day and sixty a week. No person could be required to work for more than five hours continuously and more than ten days at a stretch. A rest interval of one hour divisible into two parts at the option of the operatives was provided for every six hours of work done. Payment at the rate of $1\frac{1}{4}$ times the normal rate of pay was prescribed for overtime work. Young persons under eighteen and women were prohibited from being employed in certain lead processes. This Act with minor amendments made several times remained in force till 1934 in which year the whole Act was overhauled and a new Act containing elaborate provisions came in force on 1st January 1935. It was based on the recommendation of the Royal Commission on Labour presided over by Mr. Whiteley appointed in 1929. That Act for the first time introduced a distinction between seasonal and non-seasonal factories. Cotton ginning, cotton or jute pressing, ground nuts decorticating, coffee, indigo, lac, rubber, sugar and tea manufacturing factories were classed as seasonal factories. The local Governments were empowered to declare these factories as non-seasonal if they work for more than one hundred and eighty days in the year. The Act prescribed a ten-hour day and a fifty four-hours-week for non-seasonal fectories. For seasonal factories sixty-hour week and eleven-hour-day ware prescribed. It also provided that this spread over of work including rest intervals should not exceed thirteen hours in case of adults and seven and half hours in case of children. It also introduced a new class of persons namely 'adolescents' who were defined to be persons between the ages of fifteen and seventeen. The 'adolescents' could be employed as adults only if they were certified to be fit for so working. Children between the ages of twelve and fifteen were not allowed to work for more than five hours a day. The Act also enlarged the powers of the Factories Inspectors and amplified the health and safety provisions. It also empowered the local Governments to make rules regarding artificial humidification, protection of workers against the effects of excessive heat, provision of an adequate shelter in factories employing more than one hundred and fifty operatives and a creche in factories employing more than fifty women. During the emergency created by the Second World War the Government of India by a notification issued under Section 8 of the Act of 1934 relaxed the limit of working hours and allowed the non-seasonal factories to work for sixty hours a week.

An amending Act passed in 1945 introduced a new feature into that Act according to which the adult workers who had completed

twelve months continuous service were entitled to enjoy holidays with pay for a period of ten days. The children were allowed the same for a period of fourteen days.

In 1946 an important amendment was passed lowering the limits of daily and weekly hours of work to nine and forty eight respectively for non-seasonal factories and ten and fifty five respectively in seasonal factories.

Finally came this Act in 1948 which contains more elaborate provisions than any of the Acts passed in this country so far. It incorporates to some extent many recommendations of the Rege Committee appointed in 1943.

It may be mentioned that the protection given to children by the Factories Act has been reinforced by the provisions of the Children (pledging of labour) Act of 1933 and The Employment of Children Act of 1938 amended by an amending Act in 1939. The former Act is designed to stop the mal practice of pledging of labour of young children by their parents to employers which was found by the Royal Commission to be prevalent in carpet factories in Amritsar and cotton mills in Ahmedabad. According to this practice an employer used to advance a loan of fifty or hundred rupees to the parent or guardian in return of which the latter was made to pledge the entire labour of his child to the employer. In many cases such children were made to work for any number of hours in a day and used to receive even corporal punishment if their work did not satisfy the employer. The latter Act prohibits the employment of any child between fifteen years of age in the handling of goods on Railways and at Ports. The amending Act prescribes that no child below the age of twelve years (now fourteen years as amended by section 119 of the Factories Act 1948) shall be employed in any of the several occupations mentioned in the schedule to that Act.

The history of growth and evolution of the factory legislation in India has followed a pattern more or less similar to that in Great Britain. Every reform was stoutly opposed by the employers and the advocates of reform had to fight every inch of ground. Of course in view of the absurd theories relating to longer hours of work having been exploded in England about two or three decades before the first Act was introduced here, the employers could not seriously argue their case against the need for legislation. But they had the advantage of pleading that any reduction in the working hours out of humanitarian consideration would seriously weaken the position of the Indian industry in relation to its competitors in Lancashire and Dundee. Every attempt at

controlling the hours of work was made to appear as a part of the sinister game of British industrial interests who were caught conspiring against the infant Indian industry. The various schools of nationalist politicians and economists supported the employers' case from this point of view and urged that Indian workers should not fall a prey to wicked game of Imperialist exploiters. They admitted the justice of a plea of reduction in working hours but it appears that the consideration of profit were for them more important than the considerations of humanity. Their argument amounted to saying that the Indian industry could not live without over working and killing the children and adults employed in it.

It is not, however, sought to deny that the British vested interests did urge the intiation of factory legislation. There is no doubt that a considerable part of the momentum of the agitation was due to Lancashire manufacturers who saw in it a means "to protect themselves against the unfair competition of Indian cotton manufacturers resulting from the latter's freedom to employ the low paid labour of men, women and children without restrictions." But that was only natural. If the British working class had after a bitter struggle wrung valuable concessions from their employers it was natural desire on the part of latter that the working class in other countries also should win such concessions. This applied to the British working class also; because the rights and privileges of workers in one country cannot continue long if their confreres in other countries did not in course of time also earn such rights because otherwise the industries in other countries thriving on sweated labour would be able to ruin the more enlightened industries. The British Trade Union movement, therefore, also supported the movement of factory legislation in India.

But all these facts were not a justifiable ground for opposing a really necessary and healthy piece of legislation. A just measure does not lose its justness merely because it happens to be supported by a class of people from selfish considerations. We have seen while reviewing the history of legislation in British that the factory reform was supported by reactionary Tories in that country but that obviously did not detract from its importance and necessity. No movement in history has ever been initiated or conducted from entirely unmixed motives but that has not deterred the genuine advocates of human welfare and freedom from supporting it if it has been found on the whole conducive to human welfare and efficiency. Unfortunately the leaders of political and economic thought in our country blinded by nationalist sentiments and

animosity to the foreign rule failed to take into consideration this aspect of the problem. Consequently the employers could land a nationalistic and patriotic colour to their essentially selfish and short sighted greed. The growth of this important legislation was therefore comparatively slow.

The more regrettable fact, however, is that the employers in our country have not realised even now that shorter hours of work and necessary amenities being conducive to the efficiency and good work are *ultimately in their own interests.* This type of enlightenment has been very slow in dawning upon them. As recently as in 1946 a Bill for reducing the weekly hours of work from fifty four to forty eight introduced by Dr. Ambedkar the then Labour Member of Government of India was opposed in the Central Assembly by a Congress member Sheth Vadilal Lallubhai who happens to be a Textile king of Ahmedabad. And even after the dawn of independence, representative of employers are still found opposing tooth and nail any measure that seeks to improve the working condition on the whole on a plea of national emergency.

It is, however, hoped that the considerations of enlightened self interest if not those of humanity will ultimately pursuade most of the employers to make the life and conditions of work of their employees tolerable and enable them to keep pace with the measures demanded by the conscience of civilised mankind.

STATEMENT OF OBJECTS AND REASONS.

The existing law relating to the regulation of labour employed in factories in India is embodied in the Factories Act, 1934. Experience of the working of the Act has revealed a number of defects and weaknesses which hamper effective administration. Although the Act has been amended in certain respects in a piece-meal fashion whenever some particular aspect of labour safety or welfare assumed urgent importance, the general framework has remained unchanged. The provisions for the safety, health and welfare of workers are generally found to be inadequate and unsatisfactory, and even such protection as is provided does not extend to the large mass of workers employed in work-places not covered by the Act. In view of the large and growing industrial activities in the country, a radical overhauling of the Factories law is essentially called for and cannot be delayed.

The proposed legislation differs materially from the existing law in several respects. Some of the important features are herein mentioned. Under the definition of "Factory" in the Act of 1934, several undertakings are excluded from its scope but it is essential that important basic provisions relating to health, working hours, holidays, lighting and ventilation, should be extended to all work-places in view of the unsa-

tisfactory state of affairs now prevailing in unregulated factories. Further the present distinction between seasonal and perennial factories which has little justification has been done away with. The minimum age of employment for children has been raised from 12 to 13 and their working hours reduced from 5 to 4½, with powers to Provincial Governments to prescribe even a higher minimum age for employment in hazardous undertakings.

The present Act is very general in character and leaves too much to the rule-making powers of the Provincial Governments. While some of them do have rules of varying stringency, the position on the whole is not quite satisfactory. This defect is sought to be remedied by laying down clearly in the Bill itself the minimum requirements regarding health (cleanliness, ventilation and temperature, dangerous dusts and fumes, lighting and control of glare, etc.), safety (eye-protection, control of explosive and inflammable dusts, etc.), and general welfare of workers (washing facilities, first aid, canteens, shelter rooms, creches, etc.) amplified, where necessary, by rules and regulations to be prescribed by Provincial Governments.

Further the present Act leaves important and complex points to the discretion of Inspectors placing heavy responsibility on them. In view of the specialised and hazardous nature of the processes employed in the factories, it is too much to expect Inspectors to possess an expert knowledge of all these matters. The detailed provisions contained in the Bill will go a long way in lightening their burden.

Some difficulties experienced in the administration of the Act, especially relating to hours of employment, holidays with pay etc., have been met by making the provisions more definite and clearer. The penalty clauses have also been simplified. An important provision has also been made in the Bill empowering Provincial Governments to require that every factory should be registered and should take a license for working to be renewed at periodical intervals. Provincial Governments are further being empowered to require that before a new factory is constructed or any extensions are made to an existing one, the plans, designs and specifications of the proposed construction should receive their prior approval.

It is expected that the Bill when enacted into law will considerably advance the condition of workers in factories.

The substantial changes made in the existing law are also indicated in the Notes on Clauses. Opportunity has also been taken to rearrange the existing law and to revise expressions where necessary.

NEW DELHI;
The 5th November 1947.

JAGJIVAN RAM.

INDIAN FACTORIES ACT, 1948

ACT NO. LXIII OF 1948.

(Passed by the Dominion Legislature)

(First published, after having received the assent of the Governor General on 23rd September 1948 in "The Gazette of India" (Extraordinary) on the 23rd September 1948)[1].

An Act to consolidate and amend the Law regulating labour in factories.

Whereas *it is expedient to consolidate and amend the law* regulating labour in factories;

It is hereby enacted as follows:—

Preamble

The modern State is becoming more and more ambitious and as such is inclined to more and more interference in the affairs of the people in their various spheres. To accord the necessary sanction the act of interference assumes the form of a legislative enactment and most of the legislative enactments are undertaken with an object of fulfilling a definite social or political purpose. This object of the statute is ascertained from its preamble and a preamble of an Act as such can be taken into consideration in construing the provisions of the Act. There are some statutes, however, which are merely fiscal enactment and so they are not equipped with any preamble.

The present Act is enacted with a definite object of 'regulating labour in factories'.

Though a preamble of a statute is said to be a key to open the meaning of the makers thereof and the mischief it was intended to remedy (Co. Inst. 330), it cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt.[2]

It may be noted that an important qualification in the above proposition is "when the language and the object and scope of the Act are

1. Part IV. 292., Bill first published in Part V of the Gazette of India dated 13th December 1947. Select Committee report and the Bill as amended by the Select Committee appeares at page 552, Gazette of India, Part V dated 21st August 1948.
2. 4 Inst. 330; Powell versus Hempton Park Race Course Co. (1899) A. C. 143, 185.

not open to doubt." It may be noted that the statute may be worded in such general terms that looking at its object and scope a restricted meaning has to be given to those general words, to prevent the Statute frustrating the very object of it or aggravating the very evil which it seeks to remove.[1] For a resume of cases on this point see Archbold's Criminal Pleadings, 29th Ed. at pp. 811, 812.[2] Again when the words are capable of one meaning, and at the same time of a more extended meaning, the Court will look to the object and policy of the Act to see what meaning they ought to have.[3]

Heading prefixed to Sections.

Some of the enactments have no preamble but they have headings prefixed to sections which indicate the object of different sections or set of sections. It may be noted that headings prefixed to sections are regarded as preambles to those sections.[4] These headings thus serve an useful purpose while construing the ambiguous phrases appearing in the Act.

To amend and consolidate the law.

If an Act is titled as an Act *merely to consolidate* previous statutes, the Court may leave to a presumption that it is not intended to alter the law,[5] and may solve doubtful points by aid of such presumption of intention.[6]

There is, however, some presumption that the statute passed to amend the law is directed against the removal of defects which have come into notice about the time when the statute was passed.[7]

It is clear that in a plain consolidation Act, if it reenacts, *with a like context* a word or phrase in one of the Acts consolidated which has received judicial interpretation, that interpretation will generally, be applicable to the same word or phrase in the consolidation Act.[8]

Reference to previous law:—

Another rule of construction which must not be overlooked in dealing with an Act, like the present one is that the proper course is in the

1. R. V. Bigg (1717); 3 P. Wms. 434 Arg.
2. Reeks V. Shelly (1920); 36 T. L. R. 868, 31 Digest 578, 7273.
3. Reigate Rural Council V. Sutton District Water Co. (1908); 99 L. T. 168, 170.
4. Martins V. Fowler (1926) A. C. 746.
5. Gilbert Vs. Gilbert and Boucher (1928) P. 1, 8; citing Mitchell Vs. Simpson (1890) 25, Q. B. D., 183.
6. Romer L. J., Swan Vs. Pure Ice Co. (1935) 2 K. B. 265, 274.
7. Shaw Vs. G. W. Ry. Co. (1894) I.Q.B., 374.
8. Mitchell Vs. Simpson, 25, Q.B.D. 183
   Smith In Re: Hands Vs. Andrews, (1893) 2 Ch. 1, C. A.
   Smith Vs. Bake (1891) A. C. 349
   Bank of England Vs. Vagliano (1891), A. C. 107, 144.

first instance to examine the language of the statute and to ask what its natural meaning is, uninfluenced by any consideration derived from the previous state of the law and not start with the inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the word of enactment will bear an interpretation in conformity with this view. [1]

But nothing can justify a departure from the plain meaning of the language of the Act. It is only when the words are fairly open to more than one sense that the question arises as to what was the true intention of the legislature. The true function of such external circumstances as the fact of a statute being a consolidating or amending one is limited to suggesting a key to the true sense when the words in the statute are fairly open to more than one. [2]

The Court must endeavour only in case of ambiguity of language to apply the language to what was intended and not to extend it to what was not intended. Apart, therefore, from this particular and limited use of the intention of the framers of the Act, *even the declared intention of the framers of the Act* is irrelevant for construing the Act. In England the Dower Act, 1833 (C 105), and the statute of Charitable Uses (43 Eliz. C. 4) furnish two gloring instances of how the plain language of those statutes was construed in a manner which was avowedly contrary to the intention of the framers thereof. [3]

Scope and applicability of the Act.

The Act as the preamble shows consolidates and amends the law as relating to regulating labour in factories. The object of consolidation is "to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a useful act applicable to the circumstances existing at the time when the consolidating act was passed. [4]

In the case therefore of a consolidating statute the constructions must be not with reference to the circumstances existing at the time of the preceding Act but in relation to those existing at the time of the preceding Act but in realation to those existing at the time of the consolidating Act itself, [5] and the law thenceforth be ascertained from the

1. Nareendra Nath Vs. Kamalbasini (1886) 23, Cal. 563, P. C.
2. See dictum of Jessel, M. R., Holme Vs. Guy 5. Ch. D. 905 R. Vs. Langriville, 54, L. J. Q. B., 124.
3. Farley Vs. Bonham 1861, 30 L. J. Ch., 239 Duke Char Uses, 125, 135.
4. 22 Ind. App. 107 (P. C.)
5. 22 Ind. App. 107 (P. C.) Administrator—General. Prem Lal Mallik

enactment itself instead of being searched for in prior decisions. [1] A reference to earlier case law is however permitted for construing the word of the statute but not for the purpose of adding something to it. [2] But in applying a consolidating Act, statutes not expressly repealed should be held to continue in force without modifications. [3]

The act applies to all matters referred to in the Act except that it does not affect any special or Local Law or any specific form of procedure prescribed by or under any law for the time being in force. When there is a conflict between this Act and a special Law the latter prevails over the former on the principle that the special law prevails over the general. [4] In the absence of certain provision in allied Act, however, on any particular matter the provisions of that Act will apply. [5] It must, however, be applied with reference to circumstances peculiar to those matters. [6]

The preamble of the Act shows that it is not merely a fragmentary enactment but a consolidatory one, repealing all other previous Acts on the subject. The preamble read with some other important sections of the Act make it clear that the Act does profess to only consolidate the law on subject in a complete statute and that it is introduced with a view to create new rules and principles. It may be observed that the Act so far as it goes must be regarded as exhaustive and in any Case covered by the Act, the provisions of the Act must be applied. The wording of Sections must be regarded as a proper guide in all matters specifically dealt with by the Act.

Interpretation of the Act.

During the course of the actual administration of the Act important points are likely to arise, the judicial decision of which would depend on the interpretation of the provisions of the Act. Based on experience of the law Courts, and consistent with the principle of justice, equity and conscience certain fundamental principal rules have now been laid down relating to interpretation of a statute. The fundamental principle of interpretation of a statute is that it should be construed according to the intent of the legislature which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone

1. 23 Ind. App. 18 (P. C.) Narendranath Sirkar v. Kamalbasini Dasi
2. 46 Mad, 605 (F. B.)
3. 52 All. 619 (F. B.) Mahant Shantanand Gir Vs. Mahant Basudevanand G. I.
4. (42) 29 A. I. R. 1941 Cal. 49—60
5. 16 Ind, App. 156 (P. C. P.) Navivahoo. V. Turner
6. (84) 9 Bom. 241 (244) D. B.

do in such case, best declare the intention of the Lawgiver. But if any doubt arises from the term employed by the legislature, it has always been held a safe means of collecting the intention to have recourse to the preamble. [1]

There is another rule, however, which must not be overlooked in this connection. It is to the effect that the court must not create or imagine an ambiguity in the aid of the preamble. To do so, would, in many cases frustrate the enactment and defeat the general intention of the legislature. [2]

As a general rule, the intention of the legislature is to be ascertained from the language it has preferred to use in the Act. The Court's function is not to surmise what the legislature meant but it has only to ascertain what the legislature has said it meant. The speculative opinion of the intentions of the legislature even on matters it has omitted to enact should not guide the Law Courts in the interpretation of the Act. In a court of law what the legislature intended to be done or not to be done can be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication. [3]

One of the most important rules of construction is the *rule of literal construction.* If there is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the word and sentence.

The plain, obvious, grammatical and ordinary sense of the word is to be adhered to, unless that meaning would be in direct conflict with the rest of statute and create an absurdity. In the latter case the obvious, grammatical sense of the word may be modified so as to avoid the absurdity or inconsistency and no further.

The Courts should not zealously volunteer the interpretation of the provisions of the statute specially when the meaning attached to the language is plain and unambiguous. For such a zealous undertaking on the part of a Law-Court would go to transform its status from that of an administrator of law to that of a law giver. To add, amend or supply any deficiency in the statute even though an apparent one and whether covered intentionally or by error is no concern of law Courts.

The scope for the interpretation of the provisions of a statute by a

1. Commissioners for Income-tax V. Penosal (1891) A. C. 531 per Lord Holshury, L. C. at page 543.
2. See per Lord Davey in Powell Vs. Hempton Park Race Course Co. (1899) A. C. 143. 185.
3. (1897) A. C. 22. 38 Solomon V. Solomon & Co.

law court arises only when the meaning of the provisions of the statute is ambiguous, absurd or repugnant or inconsistent with the rest of the statute and also sufficiently flexible to admit interpretation. In these cases those provisions may be construed which if less correct grammatically are more in harmony with the intention of the legislature. [1]

In the above circumstance to arrive at a real meaning, it would not only be perfectly legitimate and judicial for the law court, but be incumbent on it to get an exact conception of the aim, scope and object of the whole Act. The true meaning of a passage is that which harmonises with the object and with every other passage of the statute and it is well settled rule that the same words are to be *prima facie* construed in the same sense in the different parts of the same statute. [2]

Construction of a particular piece of the statute must be harmonious with the remaining portion of the statute, and it should not be construed as a detached piece of legislation without sufficient regard to the setting in which it is found.

Reference to the proceedings of the legislature.

In the case of the Administrator General V. Prem Lal Malik 22. Ind. App. 107 P. C. their Lordships of the Privy Council have laid down definitely that it is not competent to refer to the proceedings of the legislature as legitimate aids to the construction of the statute. This is in consonnance with the principle stated above, that when the language is plain, no extraneous matter should be taken into account in the interpretation of the Act. Previous law contrary to this ruling cannot be considered good law after the date of this decision. Where the language is doubtful or ambiguous or in circumstances stated above such proceedings may of course be looked into. 8 Bom. 241. (246, 247) D. B.

The proceedings of the legislature would include:—

1. The statement of objects and reasons.
2. The report of the select committee.
3. The draft stages of the Bill.
4. The debate in the legislature.

Retrospective effect.

Every statute which deals with substantive law or affects or impairs

1. Moxwel on interpretation of statutes 7th Ed. P. 17 (1933) 11 Rang. 192.
2. Khan gul V Lokha Singh, A. I. R. (1918) Lah. 609 F. B.

vested rights must be presumed not to have a retrospective operation unless the language clearly supports a contrary conclusion.[1]

Marginal Notes.

It has been observed by the Judicial Committee of the Privy Council, that marginal notes to the Sections cannot be referred to for the purpose of construing an Act of the legislature, [2] but also see Ram Saran V. Bhagvat Prasad (1929) 51 All. 411. (F. B.)

There is no reason, however why marginal notes may not be looked at in order to see the general trend of a section.[3]

Punctuations.

In reading the Act of the legislature the court takes no notice of the comma.[4]

It is an error to rely on punctuations in construing Acts of the legislature.[5]

When there is no ambiguity in the language of the statute, the law on the subject can be summed up in the words of their Lordships of the Privy Council thus : "beyond the reasonable interpretation of its provisions there is no means of determining whether any particular section is intended to consolidate or amend the previously existing law."[6]

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1. Maxwel on interpretation of statutes 7th Ed. P. 186.
2. Balraj V.Jagatpal (1904) 26 All 313 406 P C The Bharat Spinning and Weaving Co. Ltd, Vs. Girni Kamgar Sangh Hubli, Appeal No 19/145 Bom Lib. Gaz. (March 1945) Vol. 24 page 417.
3. Secretary of state Vs Bombay Municipality (1938) 237 Bom. L.R. 499, 508 Dharwar Union Bank Ltd. V. Krishnarad (1937) 39 Bom L. R. 203, 209, 210.
4. Pug Vs. Ashutosh Sen (1929) 31 Bom L R. 702 (P. C.)
5. Maharani of Burdwan V. Krishna Kamini 14. Cal 365 (372) P. C.
6. Ramdas V. Amerchand & Co., (1916) 43. I. A. 164, 170.

CHAPTER I

Preliminary

1. Short title, extent and commencement:— (*1*) This Act may be called the Factories Act, 1948.

(*2*) It extends to all the Provinces of India and shall extend to such Acceding States as, by their Instruments of Accession, have accepted the subject matter of this Act as a matter with respect to which the Dominion Legislature may make laws for such States.

(*3*) It shall come into force on the day of April, 1949.

Notes :—

Some acceding States have accepted the subject matter of this Bill as a matter with respect to which the Dominion Legislature may make laws for such States. We have, therefore, amplified sub clause (2) so as to make the Bill applicable not only to the Provinces of India but to *such* acceding States. "[1]

2. Interpretation:— In this Act, unless there is anything repugnant in the subject or context.—

(*a*) "adult" means a person who has completed his eighteenth year of age;

(*b*) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

(*c*) "child" means a person who has not completed his fifteenth year of age;

(*d*) "young person" means a person who is either a child or an adolescent;

(*e*) "day" means a period of twenty-four hours beginning at midnight;

(*f*) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;

1. Report of the Select Committee.

(*g*) "power" means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

(*h*) "prime mover" means any engine, motor or other appliance which generates or otherwise provides power;

(*i*) "transmission machinery" means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;

(*j*) "machinery includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;

(*k*) "manufacturing process" means any process for—

(*i*) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(*ii*) pumping oil, water or sewage, or

(*iii*) generating, transforming or transmitting power; or

(*iv*) printing by letterpress, lithography, photogravure or other similar work or book-binding, which is carried on by way of trade or for purposes of gain, or incidentally to another business so carried on; or

(*v*) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

(*l*) "worker" means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process;

(*m*) "factory" means any premises including the precincts thereof—

(*i*) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(*ii*) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923), or a railway running shed;

(*n*) "occupier" of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

(*o*) "managing agent" has the meaning assigned to it in the Indian Companies Act, 1913 (VII of 1913);

(*p*) "prescribed" means prescribed by rules made by the Provincial Government under this Act;

(*q*) "Provincial Government" includes the Government of an Acceding State to which this Act applies and all references to a Province shall be construed as references also to an Acceding State;

(*r*) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "relay" and each of such periods is called a "shift."

Comments:

The substance of clauses (a), (b), (c) and (d) is as follows:—

The workers are classified according to age in two main groups:—

(1) 'Adults'

(2) 'Young persons.'

'Adults' are those who have completed the eighteenth year of their

age and ' young persons ' are those who have not completed eighteenth year of their age.

" Young persons " are further sub divided into two classes—

(1) " Adolescents " (2) " Children ".

" Adolescents " are those young persons who have completed their fifteenth year of age and children are those " young persons " who have not completed their fifteenth year of age.

This means that any person below fifteen is ' a child ' that between fifteen and eighteen is an ' adolescent ' that of eighteen years and more is an ' adult '.

' Children ' and ' adolescents ' together constitute a class of ' young persons '.

Changes.

It will be noticed that these definitions are a little different from those in the older legislation namely The Factories Act 1934. In that act an ' adult ' was one who has completed his seventeenth year and an ' adolescent ' was one who has completed his fifteenth but not completed his seventeenth year. The definition of ' child ' has remained unchanged. Moreover a new expression " young person " has been introduced. This expression finds a place in the English Act. The phraseology has thus been brought in line with the English Act, though the limits of age still differ from those laid down in the English Act except in the case of an ' adult ' which now means a person who has completed his eighteenth year in both the Acts.

The English Act does not use the expression ' adolescent '. The analogous word used there is " young person ". In this act, however, the expression " young person " connotes a ' child ' as well as an 'adolescent'.

Taking into consideration the various provisions of this Act regulating the labour of those who are not ' adults ' the adoption of this phraseology seems to have been made for the sake of convenience.

Section 2 (e).

It may be noted that under the English Act the expression "night" has been defined to mean the period between nine o'clock in the evening and six o'clock in the succeeding morning.

Section 2 (g)

This definition is the same as under the old Act. It may be noted

that the human or animal energy has been expressly excluded from the scope of the term ' power '. That has been done on the principle that the words " or any other form of energy which is mechanically transmitted " are to be construed *ejusdem generis* with electrical energy.

Section 2 (h), (i).

These are new clauses.

Section 2 (j)

The interpretation of the term ' machinery ' has been widened by bringing in ' prime movers ' and 'transmission machinery'.[1]

Section 2 (k)

This clause has been thoroughly overhauled. The word, 'washing, cleaning, breaking up, demolishing' in sub clause (i) did not find place in the old Act. Sub clauses (iv) and (v) are entirely new.

'Process' has been defined by the English Act as including the use of any locomotive.

In the present definition, however, clause (iii) expressly includes any process for generating, transforming or transmitting power.

It may be noted that the processes described in (k) (i) namely, making, altering, etc., are not exhaustive in view of the words 'or otherwise treating or adapting any article or substance' used in that clause. If, therefore, any article or substance is treated in any manner with a view to its use, sale, transport, delivery or disposal that article or substance would be said to have gone through a 'manufacturing process'.

The expression ' manufacturing process ' has thus been made very clear by basing its definition on various rulings under the English Act by different English Courts.

Section 2 (k) (iv) (v)

It should also be noted that the processes of ' printing by letter press, lithography, photogravure or other similar work or book binding' have been qualified by the use of words 'which is carried on by way of trade, or for purposes of gain, or incidentally to another business so carried on'. Therefore, these processes if not carried on by way of trade etc., they would not be manufacturing processes in terms of this definition.

Clause (v) seems to have been inserted to expressly include various processes connected with ship building.

Section 2 (l).

This definition is similar to that in the old Act except for the fact

1. Statement of Objects and reasons.

that the words "directly or through any agency" have been newly added and the words "but do not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on" which found place in the old definition, are now omitted.

This definition will therefore cover workers employed through contractors also. Moreover it appears that the Clerks employed in any room or place where no manufacturing process is being carried on, whom the old Act sought to exclude, will now be included. Thus the clerical staff working in the manager's or the Agent's office in a factory, it is submitted, would be 'workers' in terms of this clause. Such clerks did not come within the ambit of the old Act.

This definition is very broad in its scope because it is not necessary that a person to be a 'worker' with in the meaning of this definition should be working for wages or any other kind of remuneration or consideration. The mere fact that a person is employed in any manufacturing process etc., is sufficient to include him in this definition.

The definition is exhaustive.

This definition may usefully be compared with the definitions of 'worker' or 'employee' in various other 'Labour Laws'

Workers :

"Clearly persons employed merely for selling the manufactured articles do not come within the above definition, for they have nothing to do with work incidental to or connected with the manufacturing process. A person who sells the manufactured article though he happens to occupy the room at the factory cannot be said to be doing any kind of work incidental to or connected with the article made."[1]

"It is important to bear in mind the definition given in Section 2 (2) (of Act of 1911) which provides that a person who works in a factory whether for wages or not in any of the ways enumerated in that clause shall be deemed to be employed in that factory..... where it is shown that the persons are actually engaged in work..... it must be presumed that they are actually employed in the factory."[2]

1. 29 Cr L. J. 583=109 I. C. 599=8 L. 666=29 P.L.R. 231=A.I.R. 1928. L 78 PragNarain Vs. Emreror

See also I.N.L.R. 115.

2. 35 Cr L J. 1401, Ramdit Mall Vs. Emperor=61. Cal. 332=38 C. W. N. 801=1934 Cal. 546.

It is not correct to say that the Factories Act affected only manual labourers.[1]

Section 2 (m).

"Under the definition of 'factory' in the Act of 1934, several undertakings are excluded from its scope, but it is essential that important basic provisions relating to health, working hours, holidays, lighting and ventilation, should be extended to all work places in view of the unsatisfactory state of affairs now prevailing in unregulated factories".[2]

This definition goes much further than any one given in the various Factory Acts in India enacted from time to time ever since 1881. For the first time a provision has been made to include 'work places' not using mechanical power in the scope of the Act.

It may usefully be noted, however, that the definition of Factory as suggested in the Act, would by no means be very wide as compared to the one given in the U. K. Act or legislations of other countries. The U. K. Act does not insist on the employment of any minimum number of workers but as the word "persons" is used it implies employment *of more than one person.* The definition of a factory given in 12, Geo. V No. 42, dated 6th February 1942 of New Zealand provides that any building or place in which *two or more persons are employed* in any handicraft or manufacturing process constitutes a factory.

The old Act of 1934 only applied to places where mechanical power was used, though power was given to the Provincial Government to declare that all or any of the provisions of that Act applicable to Factories shall "apply to any place wherein a manufacturing process in being carried on whether with or without the use of power, whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding." But this power was very rarely used by Provincial Governments.

The Labour Investigation Committee appointed by the Government of India in the year 1943 popularly known as Rege Committee had the occasion to remark: "The important unregulated factories in the country are those of bidi, mica, shellac, and carpet weaving and small tanneries. Though these factories employing ten or more persons can be brought under the Factories Act for all or any purposes of the Act by a notification under Section 5 (i) no action has been taken so far by any Pro-

1. 152 I. C, 566=38 C.W.N. 1008=A.I.R 1934 Cal. 730.
Superintendent And Remembrancer of Legal Affairs, Bengal V H.E. Watson.

2. Statement of Objects & Reasons.

rincial Government, except Bombay in the case of bidi factories and J. P. in the case of glass factories, presumably because of the difficulty adequately inspecting such factories. The considered opinion of the Conference of the Chief Inspectors of Factories held in 1944 was that the Factories Act should be applied to all concerns employing ten or more workers. The workers in unregulated Factories, who constitute a considerable proportion of Industrial workers are thus the least protected and have practically remained outside the influence of legislation." [1]

It may specially be noted that this definition applies to those manufacturing processes in which power is used as well as to those in which it is not used. The only distinction made between the two is that in a process in which power is used the employment of only ten workers is sufficient to make it a 'factory' while in a process in which power is not used a minimum number of twenty workers is required to make it a 'factory.' The definition in the old Act covered only power using processes in which twenty or more persons are employed. Non-power using processes were entirely excluded by the old definition.

This Act instead of leaving the question of such protection to the discretion of the Provincial Government, itself extends it to non-power using manufacturing processes, and thus takes a long step so as to cover a considerable proportion of the working population of the country.

Taking into consideration the definition of "Manufacturing process" and of "Factory" it appears that some at least of the agricultural operation will come within the purview of the present Act, if the necessary number of workers are employed in those operation. Similarly, laundries, lodges, restaurants, eatinghouses, bookbinding works etc would also be covered by the Act.

Though the definition of 'factory' is restricted to work places employing the number of workers prescribed in this section, section 85 of the Act empowers the Provincial Government to apply all or any of the provisions of this Act to places employing a smaller number of workers.

'PREMISES' and 'PRECINCTS' are not defined in this Act, but the expression 'premises' ordinarily includes lands also. The expression 'precincts' ordinarily means 'the limit, bound, or exterior line encompassing a place'.

"The words 'premises' is defined in Murray's Oxford dictionary as 'a

1. vide Main Report page 48 Labour Investigation Committee Government of India 1944.

house or building with its grounds or other appurtenances'. According to the ordinary use of this expression when speaking of a concern like a factory, 'premises' will include all the buildings of the factory together with the compound in which they stand, 'precinct' is defined in the same dictionary as 'the space enclosed by the walls or other boundaries of a particular place or building' and 'more vaguely the region lying immediately around a place without distinct reference to any enclosure, the environs'. It appears to us to be completely clear that according to ordinary use of language all these persons, those employed on the engine, those employed on the crushers and those employed on the boiling shed must be said to be employed both on the premises and within the precincts thereof".[1]

'Or working on any day of the preceding twelve months'—

These words are very important. It is not necessary that ten or twenty workers as the case may be should be continuously working in any 'premises' to make it factory. It would suffice if on any day of the preceding twelve months ten or twenty workers, as the case may, be employed. This means that if in a workplace ten (twenty as the case may be) or more persons are working on any one day that work place would be termed a 'factory' within the meaning of this Act, during a period of twelve months succeeding that day even if in that succeeding period the number of workers are actually and permanently reduced.

' Or is ordinarily so carried on ' —

It is also not necessary for the purposes of the present Act that the ' manufacturing process ' must be carried on every day.

It is sufficient if it is carried on ordinarily. Therefore seasonal or intermittently working places are also covered by the definition. And since the distinction that was made in the old Act between seasonal and perennial factories is abolished in this Act, all the provisions of this Act now would uniformly apply to both kinds of factories.[2]

But it appears that if the work done at any place is of a casual nature it cannot be said to be ordinarily carried on.

" I do not say that the mere presence of workmen in repairing a private house would make it a work place ".[3]

1. 31 Cr. L. J. 1094. Ganpat Datta Raskar Vs. Emperor =32. B.L.R. 32(=930 Bom. 162.
2. Also see Statement of Objects and Reasons.
3. (1900) 2 Q B. 397 in Bennett Vs. Hardinge.

does not include a mine '—

Those mines that are subject to the operation of the Indian Mines Act 1923 are specifically excluded.

or a Railway running shed —

This is an additional exception. But Railway workshops are factories.[1]

By virtue of section 116 unless otherwise provided this Act shall apply to factories belonging to Central or Provincial Governments.

A factory includes everything, machine rooms, sheds, godowns, yards.[2]

The drying yard used for drying ground nuts, where machinery for decorticating the ground nuts was working is a part of factory, although there is no connection with machinery or any work incidental to the manufacturing process.[3]

Two or more buildings entirely separate may in certain circumstances form part of one and the same factory.[4]

Factory :—

" In my opinion section 2 (3) (a) is intended to cover not individual businesses but the physical entity which comprises the factory premises that is to say that if there is a building with a central source of power occupied by a number of tenants each of whom is carrying on an industrial occupation involving the use of power and machinery than regard must be had to the whole of the building and not to the various sections or units into which the building is divided. "[5]

Section 2 (n)

There has been practically no change in this definition. The definition is exhaustive.

Occupier-

An ' occupier ' is one who has *ultimate* control over the affairs of the factory.

Where it was contended that the accused were only controlling the business side of the factory and not the mechanical or other detailed working on the spot, it was held that " that was obviously insufficient

1. 50. M. 834 1927. M. 345=52.M.L J.207 =28 Cr. L. J. 267 V. Ramanadhan Vs. Emperor.
2. 119. I. C. 722 =29. Lah 573.
3. 28 Cr. L. J. 267 V. Ramanadhan Vs. Emperor.
4. See L. C C. and Tuff. In. re (1903) 86 J. P. 29, Hoyle V. Gram (1862) 12 C. B. 124.
5. 35 B. L. R. 83=57 B. 150=1933 Bom. 109 Jaichand Somachand Shah Vs. Vithal Bajirao Marathe.

to prevent their being occupiers'. "[1]

The occupier may be an owner, he may be a lessee, or even a mere licensee but he must, I think, have the right to occupy the property and dictate how it is to be managed. "[2]

Where it was contended that though the accused was the owner of the press but that he knew nothing about its management and that the whole conduct of the press was left to his Manager it was held that "the accused was the occupier of the factory and that the Manager who in fact controlled it, was a servant of the accused and in those circumstances the accused was liable as an occupier. "[3]

It is not necessary that a person should be in actual possession of the factory in order to be treated as an 'occupier'. "The Factories Act does not speak of an actual occupier or actual occupation. The question who is the 'occupier' of a factory must therefore depend among others upon these considerations, namely, who alone has the right of using the factory for the purposes for which it is constructed and worked ?; who has the right of regulating and controlling it ?, whose is the predominant possession of and general superintendence over it ? The Manager may become an 'occupier' if he has these rights; but if he is merely a servant or agent of the owner, then he is not an occupier."[4]

"The Mukaddam is really a foreman of the operatives and although he supervises their work he does so only as a servant of the factory. In no sense can it be said that he regulates and controls the working of the factory. It must, therefore, follow that the Mukaddam cannot be regarded as an 'occupier' or the Manager of the factory".[5]

Several persons may at the same time be occupiers of premises within the meaning of the Act for different purposes.[6]

Section 2 (o)

This clause is new. The expression 'managing agent' is defined by Section 2(9-A) of the Indian Companies Act 1913 (vii of 1913) to mean "a person, firm, or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and

1. 27 Cr. L J. 165. B. N. Gamadia and others V. Emperor.=50 B. 34=27 B L. R 140=1926 B. 57.
2. 32 Cr. L. J. 1063.
3. 32 Cr. L. J. 1063=55 B. 366=33 Bom. L. R. 309=1931 Bom. 308, Emperor Vs. Jamshedji Nasarwanjee Modi.
4. 7 Cr. L. J. 44=10 Bom. L. R. 38, Emperor Vs Taylor.
5. 34 Cr. L. J. 821=144 I. C. 693=1933 N. 100 Emperor Vs. Narayan Vithoba Kalar.
6. Wearings Vs. Kirk (1904) 1 K. B. 213 (C. A.) Per Mathew L. J. at page. 217.

under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm, or company occupying such position by whatever name called.

Explanation:-If a person occupying the position of a managing agent calls himself a Manager he shall nevertheless be regarded as Managing agent and not as manager for the purposes of this Act".

Section 2 (r)

It should be borne in mind that the word 'day' is defined in clause 2(e) and means a period of twenty four hours beginning at midnight so that the expression includes the hours of night also. It is common knowledge that in order to make the full use of the machinery or other equipment, different sets of workers are employed to do the same kind of work during different periods of the 'day'. Where this is the case each of such sets of workers is called a 'relay' and each of such periods is called a 'shift'. The words 'work of the same kind' be specially noted.

3. Reference to time of day.— In this Act references to time of day are references to Indian Standard Time, being five and a half hours ahead of Greenwich Mean Time:

Provided that for any area in which Indian Standard Time is not ordinarily observed the Provincial Government may make rules–

(*a*) specifying the area,

(*b*) defining the local mean time ordinarily observed therein, and

(*c*) permitting such time to be observed in all or any of the factories situated in the area.

This section corresponds to section 3 of the old Act.

4. Power to declare departments to be separate factories.— The Provincial Government may, by order in writing direct that different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

The discretion is left to the Provincial Governments concerned to utilise this section.

5. Power to exempt during public emergency.— In any case of public emergency the Provincial Government may, by notification in the official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act for such period and subject to such conditions as it may think fit.

Provided that no such notification shall be made for a period exceeding three months at a time.

In the past the power to exempt factories from the operation of the Act was often used. In that connection Rege Committee has observed "As regards exemptions under the Act, the tendency has been, generally speaking, for Provincial Governments to grant an increasing number of them. We feel that even if the power of granting exemptions is retained, it should be very sparingly used. The Royal Commission also recommended that 'if workers are compelled to work in circumstances which involve the grant of an exemption, they should, wherever possible, receive a benefit in a form balancing as closely as possible with the deprivation involved in the exemption'. Workers, however, complain that no compensation is generally extended to them by the employers and urge that there should be stipulation in the Act for the grant of compensatory privileges in lieu of exemptions."[1]

It may be noted that the old Act of 1934 by section 7 also empowered the Provincial Government to grant an exemption when it was satisfied that the number of workers in the factory was less than twenty and was not likely to be twenty or more during the next twelve months. There is no corresponding provision in this Act.

The proviso is new. This power to exempt any factory can be used only in case of public emergency. The expression 'public emergency' is vague and is not defined anywhere in the Act. But obviously the Court would have right to look and inquire into the question whether a state of 'public emergency' did in fact exist at the time the notification is issued.

In view of the likelihood that the state would come to be an 'employer' of more and more factories or undertakings there would be a temptation on the part of the government to utilise this section in the name of 'public emergency' fot its own benefit in which case a considerable number of employees would be deprived of this elementary rights under the Act.

1. Main report 48.

The language of the Section, however, is not such as would make the decision of the government about the state of 'public emergency' final and conclusive. It would be permissible under the Section as it stands to question such decision of the government in a Court of law.

By virtue of the proviso to the section the Provincial government cannot make a notification for exemption for a period exceeding three months at A TIME. There is, however, nothing in the section to prevent the Provincial Government from issuing a fresh notification, at the end of this period, after reviewing the situation arising out of the state of 'public emergency' as it existed initially.

The Central Government, however, has not been so empowered.

6 Approval, licensing and registration of factories.—(*1*) The Provincial Government may make rules—

(*a*) requiring the previous permission in writing of the Provincial Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

(*b*) requiring for the purpose of considering applications for such permission the submission of plans and specifications;

(*c*) prescribing the nature of such plans and specifications and by whom they shall be certified;

(*d*) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;

(*e*) requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given.

(*2*) If on an application for permission referred to in clause (*a*) of subsection (*1*) accompanied by the plans and specifications required by the rules made under clause (*b*) of that sub-section, sent to the Provincial Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied

for in the said application shall be deemed to have been granted.

(3) Where a Provincial Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such rufusal appeal to the Central Government if the decision appealed from was of the Provincial Government and to the Provincial Government in any other case.

Explanation.— A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery.

Comments:—

This is a totally new Section.

"As designs of the most of the factory buildings and lay outs of machinery have been found unsatisfactory and the building materials used not suited to climatic conditions of the place which made working conditions unusually trying, this clause regarding approval, licensing and registration of factories is considered very necessary".[1]

Submission of Plans of New Factories.

In the large expansion that is to be expected in Indian industries during the next few years, it is essential that the erection of new factories should not only be on sound economical and efficient lines but also that they should fulfill modern requirements that make for the safety, health and comfort of their workers. One of the lessons to be learnt from Western nations is the misery that has been caused through allowing the erection of factories in wrong positions on wrong lines and from allowing factories to be set up in old buildings quite unsuitable to the factory process involved.

An attempt to overcome this defect in the case of new factories has been made by the provisions in the Bill that there should be supervision of all new factory buildings by requiring that plans of all such buildings should be submitted for approval either to the Inspectorate or to an appropriate authority nominated by the Provincial Government".[2]

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1. Notes on clauses
2. From an article in Problems of Indian Labour published by Labour Bureau, Government of India, Ministry of Labour at page 14 by Sr Wilfrid Garret, formerly Chief Inspector of Factories

"The present Act is very general in character and leaves too much the rule making powers of the Provincial Governments.....

Provincial Government are further being empowered to require that before a new factory is constructed or any extensions are made to an existing one, the plans, designs, and specifications of the proposed construction should receive their prior approval."[1]

In sub—section (1) provisions are made enabling the Provincial Governments to make rules on matters laid down therein.

Sub-Section (2) provides that if the Provincial Government concerned or the Chief Inspector fails to pass any order on the application for permission referred to in clause (a) of section 6(1), duly tendered, "the permission applied for in the said application shall be deemed to have been granted".

Sub-section (3) makes provision for appeals against the orders *refusing to grant permission* passed by the Chief Inspector or the Provincial Government. If the order is passed by the Chief Inspector the appeal lies to the Provincial Government therefrom and if the order is passed by the Provincial Government the appeal lies to the Central Government therefrom.

Explanation—

Per sub-section 1(a) permission is needed even for 'extension of any factory'. Explanation to the section states in a negative expression that 'replacement of any plant or machinery' or addition of any plant or machinery' 'within such limit as may be prescribed' is not extension of the factory within the meaning of clause (a) of sub-section 1.

7 Notice by occupier.— (*1*) occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—

(*a*) the name and situation of the factory;

(*b*) the name and address of the occupier;

(*c*) the address to which communications relating to the factory may be sent;

(*d*) the nature of the manufacturing process—

(i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act, and

1. Statement of Object ant Reasons.

(ii) to be carried on in the factory during the next twelve months in the case of all factories;

(*e*) the nature and quantity of power to be used;

(*f*) the name of the manager of the factory for the purposes of this Act;

(*g*) the number of workers likely to be employed in the factory;

(*h*) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;

(*i*) such other particulars as may be prescribed.

(*2*) In respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (*1*) within thirty days from the date of the commencement of this Act.

(*3*) Before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (*1*) within thirty days before the date of the commencement of work.

(*4*) Whenever a new manager is appointed, the occupier shall send to the Chief Inspector a written notice within seven days from the date on which such person takes over charge.

(*5*) During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

COMMENTS.

This section is almost overhauled and has been amplified. The occupier of a factory has to supply certain informations to the Chief

Inspector through a written notice. Factories which are still to be used or occupied, factories already in existence on the date of the commencement of the Act, establishments which come within the scope of the Act for the first time in view of the new provisions and alterations provided by this Act and thus become 'factories' for the first time are included within the scope of the section.

When the 'occupier' of an existing factory is changed the new 'occupier' is required by this section to send to the Chief Inspector the abovesaid notice at least fifteen days **before** he begins to occupy or uses that factory.

Workplaces coming within the purview of the Act for the first time:—

It is necessary for the 'occupiers' of the workplaces which did not come within the scope of the 1934 Act but are 'factories' under this Act to send the requisite notices required by this Act i. e. before 1st May 1949.

" If any person sends a notice as required by this section, that is evidence of a representation by him that he is the 'occupier'; but there is nothing in the Act which makes it necessarily *conclusive evidence*. The Court *may* treat the evidence of the notice as sufficient to discharge the onus of proof lying on the prosecution at the outset and to shift the burden on to the person who gave the notice. The Court is of course not bound to treat it as such. Whether it should so treat it or not must depend on the circumstances of each case."[1]

CHAPTER II.

"....Further the present Act leaves important and complex points to the discretion of Inspectors placing heavy responsibility on them. In view of the specialised and hazardous nature of the processes employed in the factories, it is too much to expect Inspectors to possess an expert knowledge of all these matters. The detailed provisions contained in the Bill will go a long way in lightening their burden".[2] "The evasions of the law (Factories Act) are largely due to the fact that factory inspectorate in different provinces are entirely inadequate.....It is not sufficient to inspect the factories once a year. Additional visits are necessary particularly in the case of factories which are situated in the remote

1. 7 Cr. L. J. 44=10 Bom. L. R. 38, Emperor Vs. Taylor.
2. Statement of Objects and reasons.

parts of the Provinces. As rightly pointed out by Sir Atul Chatterjee, 'in India, one annual inspection of a factory is of a very limited value for the enforcement of labour laws, since the workers are mostly illiterate or live far away from the Inspector's office'. We may also state that some of the inspection reports of factory Inspectors seen by us show that they concentrate on the technical aspects of factory inspection then on the human aspects such as employment, hours of work, working conditions etc."[1]

8. Inspectors.— The Provincial Government may, by notification in the official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The Provincial Government may, by notification in the offical Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the Province.

(3) No person shall be appointed under sub-section (1), sub-section (2) or sub-section (5) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The Provincial Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspector for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where are more Inspectors than one, the Provincial Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector and Inspector shall be deemed to be a public servant, within the meaning of the Indian Penal Code

1. Main Report page 44.

(XLV of 1860), and shall be officially subordinate to such authority as the Provincial Government may specify in this *behalf*.

This section corresponds to section 10 of the old Act.

9. Powers of Inspectors.— Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(*a*) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory.

(*b*) make examination of the premises, plant and machinery, require the production of any prescribed register and any other document relating to the factory, and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act;

(*c*) exercise such other powers as may be prescribed for carrying out the purposes of this Act:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself

This section corresponds to section 11 of the old Act.

10. Certifying surgeons.— (*1*) The Provincial Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(*2*) A certifying surgeon may, with the approval of the Provincial Government, authorise any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the Provincial Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

(*3*) No person shall be appointed to be, or authorised to

exercise the powers of, a certifying surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory.

(*4*) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

(*a*) the examination and certification of young person under this Act;

(*b*) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

(*c*) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—

(*i*) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

(*ii*) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

(*iii*) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Explanation.— In this section "qualified medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedules to the Indian Medical council Act, 1933 (XXVII of 1933).

There have been some omissions, additions and alterations in this section.

In sub-section (1) instead of the expression 'medical practitioners' the expression 'qualified medical practitioners' is used. A corresponding alterations are also made in the explanation to the section.

In sub-section (2) also material alteration's are effected. The approval of the Provincial Government is now made necessary to authorise any qualified medical practitioner to exercise any of the powers of the certifying surgeon. The Provincial Government may approve such authorisations to exercise these powers on any conditions it may think fit to attach. It may also lay down the period during which such an arrangement may work.

Sub-sections (3) and (4) are totally new. Sub-section (4) enumerates the duties and functions which the certifying surgeons or authorised qualified medical practitioners shall carry out.

"The existing section 12 has been amplified by laying down the duties of the certifying surgeons more clearly".[1]

CHAPTER III

11. **Cleanliness.**— (*1*) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular—

(*a*) accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;

(*b*) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;

(*c*) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(*d*) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall—

1. Notes on clauses.

(*i*) where they are painted or varnished, be repainted or revarnished at least once in every period of five years,

(*ii*) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;

(*iii*) in any other case, be kept whitewashed or colourwashed, and the whitewashing or colourwashing shall be carried out at least once in every period of fourteen months;

(*e*) the dates on which the processes required by clause (*d*) are carried out shall be entered in the prescribed register.

(*2*) If, in view of the nature of the operations carried on in a factory, it is not possible for the occupier to comply with all or any of the provisions of sub-section (*1*) the Provincial Government may by order exempt such factory or class or description of factories from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state.

Comments :

"The existing Chapter III relating to "Health and Safety" has been split up into three separate chapters each dealing with Health, Safety and Welfare of workers. The clauses in these chapters have been redrafted and amplified prescribing minimum standard required."[1]

The Provincial Governments have been empowered to make rules prescribing a method of cleaning inside walls and partitions etc., where they are painted or varnished, or where they have smooth, impervious surfaces. They are also empowered to exempt factories from the provisions of sub-section (1) if it is not possible for the 'occupier' to comply with those provisions in view of the nature of the operations carried on in those factories. In that case they would specify alternative methods for keeping the factories clean.

This section differs from corresponding section (section 13) of the old Act, in so far as it contains more detailed provisions regarding the removal of dirt and cleansing of work rooms, and floors and repairing and revarnishing with washing, colour washing or otherwise cleaning

1, **Notes on clauses.**

walls and partitions etc., and requiring the dates of painting or white washing to be entered in the prescribed registers.

12. Disposal of wastes and effluents.— (*1*) Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on therein.

(*2*) The Provincial Government may make rules prescribing the arrangements to be made under sub-section (*1*) or requiring that the arrangements made in accordance with sub-section (*1*) shall be approved by such authority as may be prescribed.

Comments.

This section is new.

It appears to be intended to compel the 'occupiers' to make effective arrangements for the disposal of waste and effluents due to manufacturing process carried on therein. It is well-known that many 'occupiers' pay very scant attention, to this most necessary task in absence of any clear and compelling provisions of law; and most of the Local Bodies primarily responsible for general health and sanitation of the population either completely ignore or find it very difficult to compel the factory owners to make necessary arrangements for proper disposal of waste and effluents.

Sub-section (2) empowers the Provincial Governments to make rules prescribing the arrangements to be made or the Provincial Governments may allow the factory owners to make their own arrangements for the purpose but these arrangements must be approved by such authority as may be prescribed by the Provincial Governments.

Sir Wilfrid Garret formerly Chief Inspector of Factories U. K. in course of an article on this Bill writes –

"Again, in a country such as India where control of river pollution, drainage systems and public health requirements are not yet fully developed, serious dangers to health may arise because of the failure to make adequate and hygienic arrangements for the disposal of trade wastes. A section, therefore, has been inserted in the new Bill requiring that such methods must be adapted for the disposal of these trade wastes as are approved by the Helth Authorities. The researches now being carried out at the Indian Institute of Science, Banglore and the actual work carried out under the advice of this Institute show what can be

done in this direction and make this section a workable proposition of great hygienic importance in a country such as India".[1]

13. Ventilation and temperature.— (*1*) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—

(*a*) adequate ventilation by the circulation of fresh air, and

(*b*) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health;— and in particular.—

(*i*) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

(*ii*) where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperatures, such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

(*2*) The Provincial Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that a thermometer shall be provided and maintained in such place and position as may be specified.

(*3*) If it appears to the Provincial Government that in any factory or class or description of factories excessively high temperatures can be reduced by such methods as whitewashing, spraying or insulating and screening outside walls or roofs or windows, or by raising the level of the roof, or by insulating the roof either by an air-space and double roof or by the use of insulating roof materials, or by other methods, it may prescribe such of these or other methods as shall be adopted in the factory.

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1. Problems of Indian Labour Labour Bureau, Government of India, Ministry of Labour page 16.

Comments

"..... In regard to working conditions, most of the employers rarely do more than what they are forced to do by law and even this is evaded in several cases while no extra measures to prevent the occurance of accidents or secure better safety for the worker against dust, heat, etc., are usually adapted.....ventilation may be natural in which case it is effected by windows, ventilators etc. It may also be artificial, comprising methods of extraction of air by fans or propulsion of air into buildings by mechanical appliances. It is urgently needed especially in Textile Mills where work may be often carried on industy and or moist air. A fair number of industrial processes may be in jurious or otherwise in proportion to the amount and nature of the dust that they produce. Similarly an atmosphere kept moist by steam or spray as in a cotton Mill may have a deleterious effect on the helth of the workers. There are several other trades which cause dust or injurious fumes. The evil effects of deficient ventilation are well-known and yet unfortunately no special analysis of the air in various factory industries is available.

Provision for reasonable temperature in work rooms is essential. Only a few of the employers in India have devoted attention to this subject. If employers were to devote their attention to the installation of *khastatties* or air conditioning plants in their own interest in summer, conditions would no doubt improve ".[1]

This section prescribes in greater detail the arrangements for adequate ventilation and reasonable temperature and empowers the Provincial Governments to prescribe standards and methods thereof and also to direct that a thermometre shall be provided and maintained in a factory.

English Law :—

In Textile factories other than cotton factories 600 cubic feet of fresh air per hour per individual are required to be supplied.[2]

14. Dust and fume.— (*1*) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for

1. Main Report 144

1. St. R. and O. Rev. 1902 Vol. IV.

this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

Comments.

This Section is new.

Rege committee found that "in some cotton and jute mills, cotton ginning and bailing factories, rice mills, tea factories, coffee curing works and cement works, dust nuisance still prevails..... It is reported that action has been taken in most provinces to implement their (Royal Commission's) recommendations in this connection, but in actual practice the position is still far from satisfactory "[1]

Actual measures to prevent the inhalation and accumulation of dust or fume are not specified by the section nor has it been left to the Provincial Governments to make any rules for the same. What is required is effective measures should be taken. The question as to what are effective measures or not is a question of fact to be decided on the circumstances of each case.

In some big factories vacuum stripping plants for removing cotton dust have been installed. Where this is not done the conditions are intolerable. Instalation of dust respirators would effectively prevent the inhalation of dust.

15. Artificial humidification.— (1) In respect of all factories in which the humidity of the air is artificially increased, the Provincial Government may make rules,—

(a) prescribing standards of humidification;

(b) regulating the methods used for artificially increasing the humidity of the air;

(c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

1. Main Report, 42

(*d*) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

(*2*) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(*3*) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (*2*) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

Comments.

This section is virtually the same as Section 15 of the old Act. Only clause (d) of sub-section (1) is new.

It is mainly an empowering section. It leaves to the Provincial Governments to make rules for items mentioned in sub-section (1) and empowers an Inspector to serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adapted for effectively purifying the water required for increasing humidity when it appears to him that the water so used is not effectively purified as required by sub-section (2).

'Artificial humidification' is not defined in the Act. It may, however, be defined by the rules made by various Provincial Governments.

"In some of the Textile Mills workers Complained that humidification was over done to such an extent as to interfere with working conditions, it being stressed by some of the worker's representatives that such increase in moisture was made by factories using the cheaper quality of yarn in order to prevent their frequent breakages. This is a matter for expert investigation."[1]

16. Overcrowding.— (*1*) No room in any factory shall be overcrowed to and extent injurious to the health of the workers employed therein.

(*2*) without prejudice to the generality of sub-section (*1*), there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least three hundred and

1. Bhore Committee Report, Vol. I, 78 para 23.

fifty cubic feet and of a factory built after the commencement of this Act at least five hundred cubic feet of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more then fourteen feet above the level of the floor of the room.

(3) If the Chief Inspector may by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

Comments.

This section is intended to ensure sufficient space for workers employed in any work room.

Sub-section (1) prohibits overcrowding in any room to the extent injurious to the health of the workers employed therein. It is a general provision.

Sub-section (2) prescribes the actual standard of space necessary to be provided per worker. In that respect, it makes a distinction between factories existing on the date of commencement of this Act and those built after the commencement of this Act. For the former class of factories at least three hundred fifty cubic feet of space per every worker are prescribed. While for the latter five hundred cubic feet are required. It further lays down that any space which is more than 14 feet above the level of the floor shall not be taken into account for the purposes of this sub-section. That means in no case the floor area shall be less than 25 sq ft. per worker in the work room of old factories and less than about 35 sq. ft. in the work rooms of new factories.

Section 17 of the old Act did not specifically prescribe the standard of space. It has left it to the discretion of the Provincial Government to prescribe the necessary standard. It appears that many Provincial Governments did fix such standards.

It should be noted that the standard laid down in sub-section (2) is without prejudice to the generality of sub-section (1). Cases may

arise in which, in view of the special circumstances arising out of the nature of work carried on in a work room even the prescribed standard may fall short of the requirements of health. In such cases the employer cannot escape liability by only conforming to the requirements of sub-section (2).

Sub-section (3) makes it obligatory to post in each work room a notice specifying the maximum of workers who may be employed in the room having due regard to the provisions of this section, if the Chief Inspector so requires by an order in writing.

Sub-section (4) empowers the Chief Inspector to exempt *any work room* from the provisions of this Section subject to such conditions, if any, as he may think fit to impose. Of course, he can do only if *he is satisfied* that compliance with the requirements of this section is unnecessary in the interests of the health of the worker.

'Of space for every worker employed therein'.

It should be noted that the volume of space required by this section is exclusive of the space occupied by machines or other equipment or articles. The words used in the section are very clear.

17. Lighting.— (*1*) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(*2*) In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (*3*) of section 13 will allow, free from obstruction.

(*3*) In every factory effective provision shall, so far as is practicable, be made for the prevention of—

(*a*) glare, either directly from a source of light or by reflection from a smooth or polished surface;

(*b*) the formation of shadows to such an extent as to cause eyestrain or the risk of accident to any worker.

(*4*) The Provincial Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

Comments.

"Adequate and suitable lighting in places of work protects the eyesight of the employees and increases their output. Natural lighting may be derived fram the roof or from the side windows. Artificial lighting may be had through electricity, kerosene or petromax lamps. Unsatisfactory natural lighting is due to old and unsuitable buildings, nearness of other building, dirty window panes, walls and ceilings and these drawbacks are very conspicuous in many factories in India. The continuous use of artificial lighting is in itself unnatural and strains the eyes. Unsatisfactory illumination increases liability to accidents and results in diminution of the output. It is also responsible for insanitary conditions as dirt accumulates unnoticed in the absence ot adequate light. The employers must see that lighting is not only sufficient but that it avoids the casting of extraneous shadows on the actual place of work. In many cases we notice that lamps were not properly shaded with the result that light fell directly on the eyes of operatives while at work. The condition of compositors in large number of printing presses was pitiable in this respect. It appears that Inspectors of factories have seldom given their thought to such things in the course of their inspection". [1]

This section makes a general provision for sufficient and suitable lighting and for prevention of glare and formation of shadows. The actual standards of sufficient and suitable lighting have been left to be prescribed by Provincial Governments.

18. Drinking water— (*1*) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(*2*) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within twenty feet of any washing place, urinal or latrine unless a shorter distance is approved in writing by the Chief Inspector.

(*3*) In every factory wherein more than two hundred and fifty workers are ordinarily employed provision shall be made for cooling water during hot weather by effective means and for distribution thereof.

1. Main Report 144.

(4) In respect of all factories or any class or description of factories the Provincial Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

Comments.

" Most of the factories make some sort of provision for drinking water but the arrangements are neither uniform nor always satisfactory. Earthen pots used for storage are not properly cleaned in some cases. Water cups where provided are not kept clean either. Very often the employers do not engage workers for serving water at the places of work. In such cases workers sometimes make small contributions to pay waterman privately engaged by them. Where pipe water exists the tap is the only place for drinking water. During summer no special provisions are made for keeping the water cool; only in a few cases iced water is supplied.....In many cotton ginning factories and Bidi work shop for example drinking water is not even available.....In the iron ore mines the workers have to carry drinking water with them..... Generally water is brought from distance and stored in cisterns (in mica mines) but sometimes water is even obtained from abandoned mine pits. Some times brakish water from draw-wells or step-wells is also used which leads to guineaworm infection. On plantations no arrangements whatever are made for supplying drinking water to the workers in the field. Some tea estates serve hot tea without milk or sugar to the workers at mid-day.[1]

This section provides for compulsory effective arrangements for maintaining a sufficient supply of *wholesome drinking* water at *suitable points* in a factory and for marking ' drinking water ' at all such points. It further provides that no such point shall be within twenty ft. of any washing place, urinal or latrine unless otherwise approved by the Chief Inspector. It further makes provision for cooling water in hot weather and distribution of it compulsory for factories employing more than two hundred and fifty workers.

Sub-section 4 empowers the Provincial Governments to make rules for securing compliance with the provisions of the section and for the examination of the supply and distribution of ' drinking water '.

1. Main Report 158.

19. Latrines and urinals.— (*1*) In every factory—

(*a*) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory;

(*b*) separate enclosed accommodation shall be provided for male and female workers;

(*c*) such accommodation shall be adequately lighted and ventilated,

and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage:

(*d*) all such accommodation shall be maintained in a clean and sanitary condition at all times;

(*e*) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(*2*) In every factory wherein more than two hundred and fifty workers are ordinarily employed—

(*a*) all latrine and urinal accommodation shall be of prescribed sanitary types;

(*b*) the floors and internal walls, up to a height of three feet, of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface;

(c) without prejudice to the provisions of clauses (*d*) and (*e*) of sub-section (*1*), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(*3*) The Provincial Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

Comments.

".....Most of the regulated factories satisfy the letter of the law by providing seats in proportion to the number of workers but the adequacy or otherwise depends on the type of latrines and the system of cleansing provided. Flush-out latrines are certainly much more serviceable than an equal number of *kachcha* or non-sceptic ones. Even apart from it, the general structure, location, upkeep and cleaning service are very unsatisfactory in a large majority of factories. In several cases, workers have to wade through cess pools to enter the latrines in the rainy season. Some latrines and urinals have no roofs; where corrugated iron sheets are used for roofs, they are generally leaking. In some of the latrines there is no privacy and employers feel that there is no need for it. The use of disinfectants is rare, and the accommodation becomes inadequate as night soil is not removed regularly at short intervals due to inadequate number of scavangers employed and lack of supervision. This sorry state of affairs is responsible for the general habit of the workers in preferring open fields to latrines. Only rarely are urinals and latrines provided separately and in several cases latrines are not provided separately for males and females. The condition in unregulated factories is still more deplorable in this respect in as much as the employers rarely consider the provision of an adequate number of latrines a necessity. In fact, in many unregulated factories, latrines and urinals are not provided at all and workers often convert the nearest drain into a lavatory.....At some mines, trenching of night soil is in practice and at some others large herds of swines are kept."

The upkeep of latrines is on the whole most unsatisfactory. They are neither white washsd nor tarred in several industrial concerns.[1]

Sub-section (1) makes a general provision for latrines and urinals, their lighting, cleaning and the employment of sweepers etc., for all factories.

Sub-section (2), however, lays down a certain pattern to be observed in case of factories employing more than two hundred and fifty workers.

Sub-section (3) empowers the Provincial Government to fix the proposition between the number of latrines and urinals and the number of male and female workers employed, and to provide for such further matters in respect of sanitation, *including the obligation of workers in this regard*, as it considers necessary in the interest of the health of the workers employed therein.

1. **Main Report 158.**

20 Spittoons. (*1*) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

(*2*) The Provincial Government may make rules prescribing the type and the number of spittoons to be provided and their locations in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

(*3*) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

(*4*) Whoever spits in contravention of sub-section (*3*) shall be punishable with fine not exceeding five rupees.

Comments.

This section is totally new.

"Spitting is the cause of numerous diseases. We have, therefore, provided that the spittoons to be provided in a factory shall be of a prescribed type and sufficient in number. Spitting anywhere except in the spittoons has specifically been made an offence."[1]

Spitting at places other than those provided for the purposes is made a penal offence and the penalty is prescribed in sub-section (4). As regards the cognisance of the offence and the trial thereof see sections 105 and 106. Section (iii) may also be noted.

The section is self explanatory.

Refer also to notes on Section 97.

1. Notes on clauses.

CHAPTER IV.

SAFETY

"The general provisions of the Bill for the larger Factories have been extended to bring the standards of safety and of the safe working of plant upto the accepted standards of Western industrial nations not only in the safe guarding of dangerous machinery but also in securing safe methods of working in the case of hoists, lifts, lifting gear, safe means of access to place of work, protection against dangerous fumes and dusts and explosions of gases and vapours. In connection with these sections, a further step also has been taken towards increasing the responsibility of the occupier of the factory with regard to the carrying out of the requirments of the Act. Under the present Act (old Act) several important provisions need not be implemented, so far as the law is concerned, until an Inspector has given definite instructions as to the steps necessary in a particular case. This means that nothing is often done till an Inspector has visited and in a large country, this may mean a period of one or two years. The present law also, in fact, often throws the responsibility of the actual design of the safeguard on the Inspector. This is unfair to the Inspector, particularly with the growth of the law of Workmen's Compensation, and it is a poor excuse that this system is still necessary in a country where even the occupier of the factory may be still illiterate. No one should undertake the responsibility of employing his fellow subjects on dangerous machines unless and until he is able either to protect them personally against danger or is in a position to call in such advice as will ensure the safety of his workers. This does not mean that the advice of Inspectors would not be necessary; in countries where the new system has been adopted the work of Inspectors as advisers has become more and more important while this advice can be more freely given because the Inspector is relieved of the actual legal decision as to whether the guard is perfect or not. The responsibility of the occupier for the safety of his workers must be established if real progress towards accident prevention is to be made". [1]

".....Our broad finding is that owing to the comparatively less hazardous nature of Indian industries (e. g. Textile industry, plantations, small unregulated factories etc.) the incidence of accident is on the low side. However this fact is to some extent counter-balanced by the comparatively unsatisfactory provision of safety devices in most industries. The Factories Act and the Mines Act, no doubt, lay down a

1. Sir William Garret formerly Chief Inspector of Factories, U. K,

number of provisions in respect of safety and prevention of accidents. However, it appears that these provisions are not always observed by employers and owing to inadequate inspection not always properly enforced."[1]

21. Fencing of machinery.—(*1*) In every factory the following namely,—

(*i*) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not;

(*ii*) the headrace and tailrace of every water-wheel and water turbine;

(*iii*) any part of a stock-bar which projects beyond the head stock of a lathe; and

(*iv*) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,—

(*a*) every part of an electric generator; a motor or rotary convertor;

(*b*) every part of transmission machinery; and

(*c*) every dangerous part of any other machinery,

shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use:

Provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when, it being necessary to make an examination of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion, such examination or operation is made or carried out in accordance with the provisions of section 22.

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1. Main Report 376.

(2) The Provincial Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

Comments.

This section is more comprehensive than the corresponding section (s. 24) of the old Act.

Fencing compulsory:—

The fact that the machinery is so situated that there is little or no danger of accidents happening is no justification for not carrying out the requirements of a statute as to fencing;[1] but it is only necessary to keep up the fence when the parts required to be fenced are in motion for some manufacturing process;[2] but the obligation to fence machinery is absolute and is unaffected by the fact that with regard to some particular machine it may be commercially impracticable or mechanically impossible to fence it securely ;[3]

Damages

The fact that the statute imposes a penalty for omission to fence does not bar an action for damages by the workman.[4]

Every dangerous part of any other machinery—

Sub-section 1(iv) (c) refers to every dangerous part of any other machinery and it is for the Court to say whether any part of any machinery is dangerous.[5]

Machinery is dangerous if in the ordinary course of human affairs danger may reasonably be anticipated from the use of it without protection.[6]

Sub—section 2.

Sub-section (2) empowers the Provincial Governments to make rules providing for *further precautions* in addition to those contained in 1 or for exempting any particular machinery or its part from the provi-

1 Doel Vs. Sherherd (1856) 25 L J. Q. B. 124.
2. COE Vs. Platt (1851) 6. X Ex. 252
3 Watkins Vs. Naval Colliery Co. (1921) A.C. 693; Davis Vs. Oven (Thomas) & Co., (1919) 2. K. B., 39
4. Groves Vs. Wimborne (Lord), (1898) 2 Q.B. 402.
5 Redgrave Vs. Lloyd (1895) 1 Q. B. 876.
6. Hindle Vs. Birtwistle (1897) 1 Q.B. 192.

sions of the section on such conditions as may be necessary for securing the safety of the workers.

22. Work on or near machinery in motion.—

(*1*) Where in any factory it becomes necessary to examine any part of machinery referred to in section 21 while the machinery is in motion, or as a result of such examination, to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing whose name has been recorded in the register prescribed in this behalf and while he is so engaged,—

(*a*) such worker shall not handle a belt at a moving pulley unless the belt is less than six inches in width and unless the beltjoint is either laced or flush with the belt;

(*b*) without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

(*2*) No woman or child shall be allowed in any factory to clean, lubricate or adjust any part of the machinery while that part is in motion, or to work between moving parts, or between fixed and moving parts, of any machinery which is in motion.

(*3*) The Provincial Government may, by notification in the official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

Comments.

Sub-section 1 is entirely new while sub-sections 2 and 3 correspond to section 27 of the old Act.

This section is designed to secure the safety of workers who are required to carry out such essential processes as cleaning, lubricating,

adjusting, examining, mounting of belts etc., *while the machinery is in motion.*

Such operations on the type of machinery referred to in section 21 are required to be carried out only by specially trained *adult male workers* wearing tight fitting clothes. In respect of other machinery only women and children are excluded.

As an additional measure for safety the Provincial Governments have been empowered to prohibit cleaning etc,, by any person of specified parts of machinery in any specified factory or class of factories *when those parts are in motion by a notification in the official gazette.*

23 Employment of young persons on dangerous machines.— (*1*) No young person shall work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—

(*a*) has received sufficient training in work at the machine, or

(*b*) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(*2*) Sub-section (*1*) shall apply to such machines as may be prescribed by the Provincial Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

Comments.

This is a totally new section. It empowers the Provincial Government to characterise some machines as dangerous and prescribe that no 'young person' shall work at such machines unless they are fully instructed as to the dangers involved in the working thereof and the precautions required to be observed provided the conditions laid down in clause (a) or (b) are satisfied

Refer to Notes on Section 97 also

24. Striking gear and devices for cutting off power.—

(*1*) In every factory—

(*a*) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or

appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley;

(*b*) driving belts when not in use shall be not allowed to rest or ride upon shafting in motion.

(*z*) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room:

Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to work-rooms in which electricity is used as power.

Comments.

This is an entirely new section.

This is a very important safety measure and seems to have been found necessary in view of a large number of accidents arising out of the lack of efficient mechanical appliances to move driving belts to and from fast and loose pulleys of the transmission machinery.

Accidents also arise for want of suitable devices for cutting off power from running machinery in times of emergency.

In the Factories which were in operation before the commencement of the Act the provision of sub-section 2 shall not apply to work rooms in which electricity is not used as power.

This exemption seems to have been made in view of the fact that in the case of machinery not run by electrical energy it would be very difficult to satisfy the requirements of sub-section 2 without overhauling the entire plant.

25. **Self-acting machines.**— No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of eighteen inches from any fixed structure which is not part of the machine:

Provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act

which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

This section is also new.

26. Casing of New machinery.—(*1*) In all machinery driven by power and installed in any factory after the commencement of this Act,—

(*a*) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;

(*b*) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

(*2*) Whoever sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (*1*), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(*3*) The Provincial Government may make rules applying the provisions of this section to any particular machine or class or description of machines and specifying the types of safeguards to be provided thereon.

Comments.

This section applies only to such machinery as is installed after the commencement of this Act.

Sub-section 2 makes selling or letting of power driven machinery a penal offence if it does not comply with provisions of sub-section 1.

27 Prohibition of employment of women and children near cotton-openers.— No women or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work:

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery-end by a partition extending to the roof or to such height as the Inspector may in any particular case

specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

Comments.

This section corresponds to section 29 of the old Act.

Partition with unlocked door not enough :—

"..... While we do not think it necessary to go as far as the Sessions Judge and say that a partition can never have a door made in it yet we do agree with the view taken by the lower court so far as it held that if there is a door made in such a partition and that door is shown to be open at a particular time or even although it is shut yet it is not locked or other effective means taken to prevent its being opened by a woman or a child wishing to get into the press room then the partition is on the same footing as if it had a gap in it which would not effectively separate women and children from the press room and there would be a contravention of the provisions of Section 20. (this section author)."[1]

28. Hoists and lifts.— (*1*) In every factory—

(*a*) every hoist and lift shall be—

(*i*) of good mechanical construction, sound material and adequate strength;

(*ii*) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

(*b*) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;

(*c*) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;

(*d*) the cage of every hoist or lift used for carrying persons

1. 27 Cr. L. J 185 B. N Gamadia and other Vs. The Emperor.

shall be fitted with a gate on each side from which access is afforded to a landing;

(*e*) every gate referred to in clause (*b*) or clause (*d*) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened execpt when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(*2*) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:—

(*a*) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(*b*) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments,

(*c*) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(*3*) The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of the Act which does not fully comply with the provisions of sub-section (*1*) upon such conditions for ensuring safety as he may think fit to impose.

(*4*) The Provincial Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (*1*) and (*2*), by order direct that such requirement shall not apply to such class or description of hoist or lift.

Comments.

This section is new.

Requirements of sub-section 1 apply in case of every factory while the additional requirements contained in sub-section 2 apply only to such hoists and lifts as are installed or reconstructed after the commencement of this Act.

Sub-section 3 empowers the Chief Inspector to permit the use of a hoist or lift installed in a factory *before the commencement of this Act* while the Provincial Government may exempt a class of hoists or lifts whether installed in a factory *before the commencement of this Act or after*, from such requirements of sub-section 1 or 2 as it considers unreasonable to enforce.

29. Cranes and other lifting machinery.—(*1*) The following provisions shall apply in respect of cranes and all other lifting machinery (other than hoists and lifts) in any factory, namely:–

(*a*) every part thereof, including the working gear, whether fixed or movable, ropes and chains and anchoring and fixing appliances shall be—

(*i*) of good construction, sound material and adequate strength;

(*ii*) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of twelve months, and a registere shall be kept containing the prescribed particulars of every such examination;

(*b*) no such machinery shall be loaded beyond the safe working load which shall be plainly inscribed thereon;

(*c*) while any person is employed or working on or near the wheel-track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within twenty feet of that place.

(*2*) The Provincial Government may make rules in respect of any lifting machinery or class or description of lifting machinery in factories—

(*a*) prescribing requirements to be complied with in addition to those set out in this section;

(*b* exempting from compliance with all or any of the requirements of this section, where in its opinion such compliance is unnecessary or impracticable.

This Section is new.

30. Revolving machinery.— (*1*) In every room in a factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(*2*) The speeds indicated in notices under sub-section (*1*) shall not be exceeded.

(*3*) Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, flywheel, pulley, disc or similar appliance driven by power is not exceeded.

Comments.

This is also a new section.

It may be noted that the question as to what are effective measures and what are not is a question of fact to be decided in the light of the circumstances attending each case.

31. Pressure plant.—(*1*) If in any factory any part of the plant or machinery used in a manufacturing process is operated at a pressure above atmospheric pressure effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded.

(*2* The Provincial Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.

This is also a new section.

32. Floors stairs, and means of access.—In every factory—

(*a*) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained, and where it

is necessary to ensure safety steps, stairs, passages and gangways shall be provided with substantial handrails;

(*b*) there shall, so far as is reasonable practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work.

This section is new.

33. Pits, sumps, openings n floors, etc.—In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

(*2*) The Provincial Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump tank, pit or opening from compliance with the provisions of this section.

This is a new section.

34. Excessive weights.— (*1*) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

(*2*) The Provincial Government may make rules prescribing the maximum weights may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

This is also a new section.

35. Protection of eyes.—In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves—

(*a*) risk of injury to the eyes from particles or fragments thrown off in the course of the drocess, or

(*b*) risk to the eyes by reason of exposure to excessive light.-

the Provincial Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

Comments.

"The wearing of protective eye glasses is not strictly enforced even where employers provide them. We found them hung up on walls in many cases. The chance of the foreign bodies getting into the eyes is not negligible in certain occupations. The damage done may lead to serious consequences involving, in some cases, loss of sight to the worker and the payment of heavy compensation by the employer. It may be that the disinclination of the employees to use glasses is due to their unsuitable design, inasmuch as they are, in the majority of cases, of the closed goggle type with no ventilation to the eye."[1]

Words 'manufacturing process' and 'factory' are defined under the Act. Out of these manufacturing processes certain processes are to be prescribed as involving risk of injury to the eyes or risk to the eyes as shown in sub-section (a) and (b). The Provincial Government is empowered to make rules to safeguard the employees from such risk to their eyes. The goggles and the screen must be so designed as to offer effective protection to the eyes.

36. Precautions against dangerous fumes.—(*1*) In any factory no person shall enter or be permitted to enter any chamber, tank, vat, pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risk of persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(*2*) No portable electric light of voltage exceeding twenty-four volts shall be permitted in any factory for use inside any confined space such as is referred to in sub-section (*1*), and where the fumes present are likely to be inflammable, no lamp or light other than of flame-proof construction shall be permitted to be used in such confined space.

(*3*) No person in any factory shall enter or be permitted to enter any confined space such as is referred to in sub-section (*1*)

1. Report of the Health Survey and Development Committee (popularly known as Bhore Committee) 1946 Vol. I 179.

until all practicable measures have been taken to remove any fumes which may be present and to prevent any ingress of fumes and unless either—

(*a*) a certificate in writing has been given by competent person, based on a test carried out by himself, that the space is free from dangerous fumes and fit for persons to enter, or

(*b*) the worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space.

(*4*) Suitable breathing apparatus, reviving apparatus and belts and ropes shall in every factory be kept ready for instant use beside any such confined space as aforesaid which any person has entered, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use; and a sufficient number of persons employed in every factory shall be trained and practised in the use of all such apparatus and in the method of restoring respiration.

(*5*) No person shall be permitted to enter in any factory any boiler furnace, boiler flue, chamber tank, vot, pipe or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

(*6*) The Provincial Government may make rules prescribing the minimum dimensions of the manholes referred to in sub-section (*1*), and may by order in writing exempt, subject to such conditions as it may think fit to impose, any factory or class or description of factories from compliance with any of provisions of this section.

This is a new section.

37. Explosive or inflammable dust, gas, etc.—(*1*) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by—

(*a*) effective enclosure of the plant or machinery used in the process;

(*b*) removal or prevention of the accumulating of such dust, gas, fume or vapour;

(*c*) exclusion or effective enclosure of all possible sources of ignition.

(*2*) Where in any factory the ptant or machinery used in a process such as is referred to in sub-section (*1*) is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spead and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliances.

(*3*) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely:—

(*a*) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-valve or other means;

(*b*) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure;

(*c*) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured, or, as the case may be, securely replaced:

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(*4*) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation

which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) The Provincial Government may by rules exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

This is also a new section.

38. Precautions in case of fire.— (1) Every factory shall be provided with such means of escape in case of fire as may be prescribed, and if it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing specifying the measures which, in his opinion should be adopted to bring the factory into conformity with the provisions of this section and any rules made thereunder, and requiring them to be carried out before a date specified in the order.

(2) In every factory the doors affording exit from any room shall not be locked or fastened so that they cannot be easily and immediately opened from the inside while any person is within the room, and all such doors, unless they are of the sliding type, shall be constructed to open outwards.

(3) In every factory, every window, door or other exit affording a means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in a language understood by the majority of the workers and in red letters of adequate size or by some other effective and clearly understood sign.

(4) There shall be provided in every factory effective and clearly audible means of giving warning in case of fire to every person employed in the factory.

(5) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of a factory.

(6) Effective measures shall be taken to ensure that in every factory.–

(a) wherein more then twenty workers are ordinarily employed in any place above the ground floor, or

(b) wherein explosive or highly inflammable materials are used or stored,

all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

(7) The Provincial Government may make rules prescribing, in respect of any factory or class or description of factories, the means of escape to be provided in case of fire and the nature and amount of fire-fighting apparatus to be provided and maintained.

Comments.

This section corresponds to sections 21, 22 and 23 of the old Act.

Serve on the Manager an order in writing:

The fair meaning of these words is that a regular formal order should be served definitely on the Manager of the factory and that it should specify exactly what measures the Manager is to take. A mere note of a visit can hardly be said to be an order. The Inspector should make up his mind definitely what is the order he requires to be carried out under this Act and for breach of which he would prosecute the Manager or owner under the Act and that equally definite notice is to be given to the latter. The mere fact that the manager was aware of what the Inspector wanted him to do is not a sufficient compliance with the specific requirements of this penal Act.[1]

39. Power to require specifications of defective parts or tests of stability.—

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or

1. 26 B L. R. 1245 Emperor vs. Narayan Anant Desai.

safety, he may serve on manager of the factory an order in writing requiring him before a specified date—

(*a*) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(*b*) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

This section corresponds to section 25 of the old Act.

40. Safety of buildings and machinery.— (*1*) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(*2*) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

This section corresponds to Section 26 of the old Act.

41. Power to make rules to supplement this chapter.—

The Provincial Government may make rules requiring the provision in any factory or in any class or description of factories of such further devices for securing the safety of persons employed therein as it may deem necessary.

This section generally empowers the Provincial Government to make rules relating to the provision of such additional safety devices for workers as it deems necessary.

CHAPTER V

WELFARE

"....For our part, we prefer to include under welfare activities anything done or the intellectual, physical, moral and economic betterment of the workers, whether by employers, by Government or by other agencies, over and above what is laid down by law or what is normally expected as part of the contractual benefits for which the workers may have bargained. Thus, under this definition, we may include housing, medical and educational facilities, nutrition (including provision of canteens), facilities for rest and recreation, co-operative societies, day nurseries and creches, provision of sanitary accommodation, holidays with pay, social insurance measures undertaken voluntarily by employers alone or jointly with workers, including sickness and maternity benefit schemes,[1] Provident Funds, Gratuities and pensions, etc. Some of these matters are already covered in other Chapters. In this chapter we propose to take a bird's eye view of activities not already discussed elsewhere.

Necessity of Welfare Work.

....Having defined the scope of welfare activities, let us turn to the necessity of adding these to the contractual relationship between the employer and the workers. In the first place, there is no doubt as regards the beneficial effects of welfare measures such as educational facilities, sports, entertainments, etc., on the sentimental atmosphere in the factory and their contribution to the maintenance of industrial peace. When the worker feels that the employer and the State are interested in his day-to-day life and would like to make his lot happier in every possible way, his tendency to grouse will steadily disappear. Secondly, better housing, co-operative societies, canteens, sickness and maternity benefits, provident funds, gratuities and pensions, and such other things are bound to create a feeling amongst the workers that they have a stake in the industry as much as anyone else, and the present situation under which labour turnover and absenteeism prevail and the workers are constantly trekking to their village homes in search of social security and recreation, will yield place to a new situation in which the working class becomes more stabilised and economically efficient.[2] Thirdly, the

1. No account of such schemes is given here. Reference may be made to Prof. Adarkar's Report on Health Insurance which contains an account of existing sickness benefit schemes in India at pp. 137-148.

2. This is admitted by some employers as well. For example, the Banglore Woolen, Cotton and Silk Mills, in their Memorandum to

social advantage even-apart from the humanitarian value-of such activities are considerable. Thus, the provision of canteens where cheap, clean and balanced food is available to workers must improve their physique; entertainments must reduce the incidence of vices; medical aid and maternity and child welfare must improve the health of workers and their families and bring down the rates of general, maternal and infant mortality; and educational facilities must increase their mental efficiency and economic productivity. Fot achieving the maximum results, however welfare activities have to be undertaken in the right spirit, i.e. mainly with a view to making the lives of the workers happier and healthier. Thus, it has been stated by some trade unions not wholly without reason that employers often make use of welfare activities for undermining the influence of trade unions and to wean away the workers from them by discriminating against those who are members of unions. Such vindictive use of welfare activities must necessarily have unfortunate consequences in the long run.

The Indian industrial worker has ofteen been condemned as lazy and inefficient, but as pointed out by the Bombay Textile Labour Enquiry Committee. It is axiomatic that in all pursuits a high standard of efficiency can be expected only from persons who are physically fit and free from mental worries, that is, only from persons who are properly trained, properly housed, properly fed and properly clothed.[1] In this connection, we fully endorse the question of welfare activities (which, of course, are a direct solution of the problem), it is desirable to have an Institute of Industrial Welfare Research, wherein the questions of fatigue, hygiene and unrest could be fully investigated, and the result utilised for advancing both industrial efficiency and human well-being."[2]

"However, we are inclined to agree with Dr. B. R. Sheth, who observes: 'The vast majority of industrialists in India still regard welfare work as a barren liability rather than a wise investment'.[3] On the whole, it may be stated, that employers who take a most indifferent and nonchalant attitude towards welfare work and say that no rest shelters are provided as whole premises belong to the workers themselves, no latrines are provided because workers prefer the open spaces, no canteens and

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the Committee, remark "Welfare activities carried on in the mills have contributed in making service in the mills attractive to labour and in creating a permanent, settled labour force. Attendance and efficiency are better."

1. Report, 264
2. Main Report 345, 346
3. In an article on "Labour Welfare Work" in the U.P. Labour Bulletin June 1042, 228.

sports are necessary because they are not likely to make use of such facilities and so on, constitute the majority. It is apparent that unless the precise responsibilities of employers in regard to welfare work are defined by law, such employers are not likely to fall in line with their more enlightened and far-sighted confreres."[1]

42. Washing facilities.— (*1*) In every factory—

(*a*) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein;

(*b*) separate and adequately screened facilities shall be provided for the use of male and female workers;

(*c*) such facilities shall be conveniently accessible and shall be kept clean.

(*2*) The Provincial Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

Comments.

"Almost all the factories provide water for washing but not soap, soda and towels which are also necessary. In many cases the number of taps and basins is inadequate. Only in a few cases are the facilities for washing completely satisfactory. As for bathing facilities very few employers provide this inside factory premises. 'The workers who live in crowded areas have inadequate facilities for washing at their homes and bathing facilities would add to their comfort, health and efficiency".[2]

This section does not make it very clear as to whether the facilities intended to be provided for include bathing facilities also. It is submitted that in view of clause (b) which speaks of 'screened facilities' for the use of male and female workers the intention may well be to include bathing in the term washing.

This section leaves it to the Provincial Governments to prescribe specific standards of the facilities mentioned in the section.

This section corresponds to section 19 (3) of the old Act.

43. Facilities for storing and drying clothes.—

The Provincial Government may, in respect of any factory or class or description of factories, make rules requiring the provision

1. Main Report, 349. | 2. Main Report, 360.

therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

This is a totally new section.

44. **Facilities for sitting.**—(*1*) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

(*2*) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

(*3*) The Provincial Government may, by notification in the official Gazette, declare that the provisions of sub-section (*1*) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

Comments.

This section is new.

This section seems to follow the recommendation of the Health Survey and Development Committee (Bhore Committee) to this effect.[1]

45. **First-aid appliances.**—(*1*) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed in the factory.

(*2*) Nothing except the prescribed contents shall be kept in the boxes and cupboards referred to in sub-section (*1*), and all such boxes and cupboards shall be kept in the charge of a responsible person who is trained in first-aid treatment and who shall always be available during the working hours of the factory.

(*3*) In every factory wherein more than five hundred workers

1. Report Vol. II, 134.

are employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed.

Comments.

"We feel that there is a residue of medical amenities which can be rightly regarded as the sole responsibility of the employer. In particular, the provision of First Aid in the event of sudden sickness or an accident is undoubtedly the responsibility of the employer. Likewise provision of ambulance, maintenance of standards of industrial hygiene may also be regarded as primarily matters to be dealt with by the employers.....

Practical investigations conducted by the committee, which is also corroborated by the experience of the Factory Inspection staff reveals that in a number of cases the contents of this First Aid boxes are not renewed even after they are used up. Secondly there is no certainty that the First Aid Boxes are even used at all by the employers in the event of accident or sudden sickness. In most places there is no one trained in First Aid with the result that when an accident occurs no relief can be administered on the spot and the worker is just removed to some public dispensary or hospital nearby."[1]

".....very few factories possess their own ambulances. Many utilise the factory lorry or car. In several instances it was reported to us that workers had to make their own arrangements for conveyance to hospitals."[2]

This section is new. Section 32 of the old Act, however, empowered the Provincial Governments to make rules, among others, requiring managers of factories to maintain stores of First Aid appliances and provide for their proper custody.

46. Canteens — (*1*) The Provincial Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or or canteens shall be provided and maintained by the occupier for the use of the workers.

(*2*) Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the date by which such canteen shall be provided;

1. Main report, 358. | 2. Bhore Committee Report Vol. I, 77.

(*b*) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(*c*) the foodstuffs to be served therein and the charges which may be made therefor;

(*d*) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(*e*) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

Comments.

"The works canteen is being increasingly recognised all over the world as an essential part of an industrial establishment, providing undeniable benefits from the point of view of health, efficiency and well-being. To introduce an element of nutritional balance into the otherwise deficient and unbalanced dietary of the workers, to provide cheap and clean food and an opportunity to relax in comfort near the place of work, to save time and trouble to workers on account of exhausting journeys to and from work after long hours in the factory, and (during war time at any rate) to enable them to surmount the difficulties experienced in obtaining meals or foodstuffs- these are some of the objects of an industrial canteen. In European and American countries canteens are becoming immensely popular and are looked upon as so many laboratories carrying on experiments in nutrition and dietics and are making rapid progress as instruments of industrial welfare. In the United Kingdom, the Factories Act, 1937, requires the employer to provide mess-room accommodation, while under a recent order, 'efficient and suitable canteens where hot meals can be purchased may be ordered by the Factories Inspector to be provided in a munitions or other factory employed on Government work, and employing more than two hundred fifty workers; in building and engineering operations, in constructing munitions factories, aerodromes, defence work, etc., and in any docks'.[1] In India, it is a different story altogether. Firstly, in a majority of mills and factories, there are no canteens at all. Nor are they required under the Factories Act or any other law. The Factories Act (under Section 33) merely empowers Provincial Governments to make rules 'requiring that in any specified factory, wherein more than one hundred fifty

1. Canteens in Industry, (published by the Industrial Welfare Society of the U. K.)

workers are ordinarily employed, an adequate shelter shall be provided for the use of workers during periods of rest.' and to prescribe standards for such shelters. We have had opportunities of seeing some of these shelters and feel that barring a few exceptions they can hardly be regarded as places suitable for relaxation during rest intervals.

Canteens, tea stalls, refreshment rooms, etc., are, therefore, a *ex gratia* affair and they can hardly conform to any standards or principles for the simple reason that no such standards or principles have been laid down anywhere. In most places, where they exist, they are little more then private contractors' tea-stalls, supplying tea and sweets. Where foodstuffs are supplied, they are neither cheap nor good in quality, while the environments are anything but clean, sanitary or attractive. 'The maximum of profit' is the only principle of the contractor, who is there by virtue of being the highest bidder for the contract. As pointed out by the Bombay Textile Labour Enquiry Committee (Report, p. 303) high rents are charged to these contractors by factory owners for the use of premises. All this results in high prices being charged to workers or bad food being provided at low prices. No wonder then that workers prefer to bring their own snack with them for mid-day cousumption."[1]

This is also a new section.

It may be noticed that this statute does not by itself make the provisions of canteens compulsory but leaves it to the Provincial Governments, if they so desire, to make rules regarding the provision and management of canteens in any specified factory ordinarily employing more than two hundred fifty workers.

47. **Shelters, rest rooms and lunch rooms** —(*1*) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers :

Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section :

Provided further that where a lunch room exists no worker

1. Main report. 352

shall eat any food in the work room.

(2) The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The Provincial Government may—

(a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section;

(b) by notification in the official Gazette, exempt any factory or class or description of factories from the requirements of this section.

Comments.

"It is distressing to see workers sitting under trees or squatting on the ground in dirty premises or seeking dark nooks in their department to eat their meals."[1]

Second proviso to sub-section (1) may be noted. It prohibits a worker from eating any food in the workroom where a lunch-room exists. A worker acting in contravention of this provision would be punishable under section 97.

48. **Creches.**— (1) In every factory wherein more than fifty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The Provincial Government may make rules—

(a) prescribing the location and the standards in rsepect of construction, accommodation, furniture and other equipment of rooms to be provided under this section;

(b) requiring the provision in factories to which this section applies of additional factories for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;

1. Main report, 160.

(*c*) requiring the provision in any factory of free milk or refreshment of both for such children;

(*d*) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Comments.

"....On the whole, however, the employers have been rather slow in observing the requirements in regard to provision or creches even in Provinces where the law requires it. Things were bad enough in former years when there was no provision of creches, as women used to keep their children with them while working near the machines or, worse still, drug them with opium and leave them at home. Mills which are not legally obliged to establish creches do not have them at all. Even those employing more than one hundred women workers in a large number of cases evade provision of the law and put forward some lame excuse or other in justification, such as, e.g, that the women in the factory are unmarried and so require no creches; or that only women who have passed the child-bearing age are employed; or that thay are widows, etc. Even where the rules are observed, the tendency is to conform only to the letter of the law and to break the spirit of it. Thus, some dark room in a corner away from the workplace may be set apart with no playthings to attract the children and nobody to look after them. The Royal Commission (Report, p.65) stated that though creches were not uncommon in factories employing women, and some or these they saw were admirably staffed and equipped, 'others if better than nothing, still left much to be desired; yet others were both durty and inadequately furnished'. This state of affairs still continues in a large measure. Generally speaking, the creche is one of the neglected corners of the factory and if an ayah or nurse is in attendance, she seldom pays sufficient attention to the requirements of the children left there. The emoluments of nurses in charge are usually low. Supervision even in good creches leaves much to be desired. For example, at one place we were told that women workers doped their babies in creches with the connivance of the nurse in charge. The atmosphere is seldom very clean, and standards of sanitation is seldom very high. If cradles are provided, there are not enough of them, with the result that children are allowed to lie on the floor, generally in dirty clothes and crying for want of attendance On occasions of visits of officers or Committees, there is a considerable amount of window-dressing, and even then conditions do not appear to

be very satisfactory."[1]

49 Welfare officers.—(*1*) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(*2*) The Provincial Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (*1*).

This is a totally new section.

50. Power to make rules to supplement this Chapter. The Provincial Government may make rules—

(*a*) exempting, subject to compliance with such alternative arrangements for the welfare of the workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter;

(*b*) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

Comments.

The head note of the section appears to be misleading because the section as a whole not only empowers the Government to make rules for a matter supplementary to this chapter but also exempting any factory or class of factories from compliance with any of the provisions of this chapter.

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1. Main report, 355.

CHAPTER VI.

WORKING HOURS OF ADULTS.

51. Weekly hours.— No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Comments.

Persuant to the recommendations of the Royal Commission, the Factories Act 1934 had restricted the weekly hours of work for adults in a perennial factory to fifty four and for seasonal factories to sixty. In view of the general trend, however, in the direction of the reduction of working hours in the progressive countries of the world and also of the fact that a reduction in working hours is conducive to the efficiency of the workers upto a particular point the legislature reduced the limit from fifty four to forty eight in case of perennial factories and from sixty to fifty four in case of seasonal factories by an amending Act passed in 1946.

The present Act has kept the limit of forty eight as it is but has deemed it proper to abolish the distinction between perennial and seasonal factories with the effect that now under this Act the hours of work are restricted to forty eight hours *per week in all classes of factories.*

Allowed to work in a factory :

The section is not confined to any act which the occupier himself has allowed but it also includes an allowance by a servant or agent of the occupier.[1]

Section 34 of the old Act only contained the words "shall be allowed to work ".

In the original Bill of this Act the word 'employed' was substituted for the words 'allowed to work'. The reason for this change as stated in the notes on clauses appended to statement of objects and Reasons is as follows :

"Also the words 'allowed to work' wherever they occur in the existing Act have been substituted by the word 'employed' so as to obviate the plea that when the 'occupier' was absent at the time he could not have allowed the worker to work".

But it appears that at some stage in course of the piloting of the Bill in the legislature this change was considered unnecessary and altogether a new change introduced viz., the words "required or" are

1. See In Re Crab Tree, 85. L. T. 549.

inserted before the words "allowed to work". The effect of this change is that now a worker can neither be allowed nor *asked* to work for more than the prescribed limit.

52. Weekly holidays.—(*1*) No adult worker shall be required or allowed to work in a factory on the first day of the week (hereinafter referred to as the said day), unless—

(*a*) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and

(*b*) the manager of the factory has, before the said day or the substituted day under clause (*a*), whichever is earlier,—

(*i*) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and

(*ii*) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(*2*) Notices given under sub-section (*1*) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

(*3*) Where in accordance with the provisions of sub-section (*1*), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Comments.

This section corresponds to section 35 of the old Act.

First day of the week:—

In view of the definition of the word 'week' given in section 2(f) the expression 'first day of the week' will mean Sunday except in cases where the Chief Inspector of Factories has approved in writing 'such other night' for a particular area at which the week begins.

53. Compensatory holidays.—(*1*) Where, as a result of

passing of an or the making of a rule under the provisions of this Act exempting a or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (*1*) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(*2*) The Provincial Government may prescribe the manner in which the holidays for which provision is made in sub-section (*1*) shall be allowed.

Comments.

This section corresponds to section 35 (A) of the old Act. The words 'within the month in which the holidays were due to him or within the two months immediately following that month" have been substituted for the words "as soon as circumstances permit" which appeared in the old section.

54. Daily hours.—Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Comments.

This section corresopnds to section 36 of the old Act.

The present section has abolished the distinction between seasonal and non-seasonal factories in respect of daily hours of work.

It may be noted that this section does not allow work of nine hours a day for all the days of the week because this section is subject to the provision of section 51 which limits the weekly hours of work to forty eight. On an average, therefore the working day is of eight hours and not nine but a factory can be worked for a maximum period of nine hours a day if care is taken to see that the total hours of work in a week do not exceed forty eight. At the same time the provision of section 61 relating to the previous fixing of the hours of work may be noted.

55. Intervals for rest.—The period of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest at east half an hour.

Comments.

Section 37 of the old Act has been redrafted. "As daily hours of work have been reduced to nine, the period of week before rests has been reduced five".[1]

56. Spreadover.— The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours in any day:

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spreadover to twelve hours.

This section corresponds to section 38 of the old Act.

57. Night shifts.—Where a worker in a factory works on a shift which extends beyond midnight,—

(*a*) for the purposes of section 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

(*b*) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day

Comments.

It corresponds to section 46 of the old Act.

"This has been redrafted in order to make it clear that a continuous rest period of twenty-four hours will be counted as a day's holiday".[2]

58. Prohibition of overlapping shifts—(*1*) Work shall not be carried on in any factory by means of a system of shifting so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

(*2*) The Provincial Government may, subject to such conditions as may be prescribed, make rules exempting any factory or class or description of factories from the provisions of sub-section (*1*).

Comments.

This section is new. Section 49 of the old Act, however, empowered the Provincial Government to make rules pertaining to the control of overlapping shifts.

1. Notes on clause (of the Bill) | 2. Notes on clauses.

59 Extra wages for overtime.— (*1*) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week he shall, in respect of overtime work be entitled to wages at the rate of twice his ordinary rate of wages.

(*2*) Where any workers in a factory are paid on a piece rate basis, the Provincial Government, in consultation with the employer concerned, and the representatives of the workers shall, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers.

(*3*) For the purposes of this section, "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus.

(*4*) The Provincial Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Comments.

This section corresponds to section 47 of the old Act. It has however been thoroughly overhauled.

The word 'pay' used in the old section was rather vague. It was not clear whether the term included Dearness Allowance, other allowances or the cash equivalent of concessions made to a worker in the sale of food grains or other articles in addition to the basic wages. The present section removes that vagueness by use of expression 'ordinary rate of wages' in place of the expression 'ordinary rate of pay' and further by defining that expression to mean the basic wages plus othor allowances including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles. It however does not include 'Bonus' in this expression.

The distinction between seasonal and non-seasonal factories in this respect is now removed.

60. Restriction on double employment - No adult wor-

ker shall be required or allowed t work in any factory on any day on which he has already been working in any ry, save in such circumstances as may be prescribed.

This section corresponds to section 48 of the old Act.

6'. Notice of periods of work for adults.—(*1*) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (*2*) of section 108, a notice of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(*2*) The periods shown in the notice required by sub-section (*1*) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55 and 56.

(*3*) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally

(*4*) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group.

(*5*) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(*6*) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

(*7*) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts whereunder the periods during which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The Provincial Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

Comments.

"Existing sections 39 and 40 have been combined and redrafted with verbal changes,"[1]

Displayed and correctly maintained:-

Displaying an incorrect notice is tantamount to not displaying a notice prescribed and would be punishable as a breach of this section.[2]

"This main object of the section probably is not to ensure that the Manager and no one else should fix the hours but that the hours should be fixed and regular.

....They are not to be subject to sudden and casual alteration at any one's discretion or caprice.

....If the manager of a mill, because there is a break down or because the engine is running badly or because it is running particularly well or because there is pressure of work or because it is a fine day or because it is a wet day has only got to say 'very well we will work on till 5-45 instead of 5-30' the standing orders would become a dead letter and there would be no such thing as fixed and regular hours."[3]

62. Register of adult workers.—(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any

1. Notes on the laus
2. See I.L.R. (1943) Nagpur, 38., Allbhai alias Ali Mohammad Vs. Crown
3. 35. Cr. L.J. 542.Emperor Vs. Nanubhai Maneklal.

work is being carried on in the factory, showing—

(*a*) the name of each adult worker in the factory;

(*b*) the nature of his work;

(*c*) the group, if any, in which he is included;

(*d*) where his group works on the shifts, the relay to which he is allotted;

(*e*) such other particulars as may be prescribed :

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

(*2*) The Provincial Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Comments.

"Existing section 41 has been redrafted with verbal changes. It has been made obligatory on the part of the Manager to show the register to the Inspector at all times during working hours."[1]

This section is mandatory and it makes the position clear that in absence of an order by the Inspector, one register in a prescribed form of all persons employed and of the hours and nature of this employments must be kept. It cannot be supplemented by a time sheet.[2]

63. Hours of work to correspond with notice under section 61 and register under section 62.—No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adults workers of the factory.

Comments.

This section corresponds to section 42 of the old Act.

Work outside fixed hours:-

Where men worked during a time which is admittedly outside the

1. Notes on clauses.
2. 152 I.C. 566. Superintendent and Remembrancer of Legal Affairs, Bengal. Vs. H.E. Watson.

time fixed for employment of each person employed in the factory the owner of the factory would be guilty under this section. [1]

To work in any factory:-

Where the manager of an ice factory had fixed only seven and half hours a day for employees but it appeared that persons who had finished their work used to take ice to ships in the docks when required it was held that the extra work was not work done in or about the factory and that it did not fall within the prohibitory provisions of the Act.[2]

64. Power to make exempting rules—(*1*) The Provincial Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provisions of this Chapter, other than the provisions of clause (*b*) of sub-section (*1*) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined.

(*2*) The Provincial Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed—

(*a*) of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;

(*b*) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55 and 56;

(*c*) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;

(*d*) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day, from the provisions of sections 51, 52, 54, 55, and 56;

1. See 31. Cr.L.J. 1220 Kamalapat Vs. Emperor

2. 134. I.C 881. Superintendent and Remembrancer of Legal Affairs. Bengal Vs. J.J. Andrews

(*e*) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of section 52;

(*f*) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of section 52;

(*g*) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;

(*h*) of workers engaged in engine-rooms or boiler-houses or in attending to power-plant or transmission machinery, from the provisions of section 52.

(*3*) Rules made under sub-section (*2*) providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the Provincial Government may deem to be expedient, subject to such conditions as it may prescribe.

(*4*) In making rules under this section, the Provincial Government shall not exceed, except in respect of exemption under clause (*a*) of sub-section (*2*), the following limits of work inclusive of overtime :—

(*i*) the total number of hours of work in any day shall not exceed ten ;

(*ii*) the total number of hours of overtime work shall not exceed fifty for any one quarter;

Explanation.—"Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October;

(*iii*) the spreadover inclusive of intervals for rest shall not exceed twelve hours in any one day :

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in section 54 may be exceeded in order to facilitate the change of shifts.

(*5*) Rules made under this section shall remain in force for not more than three years.

Comments.

This section corresponds to section 43 of the old Act.

"In para (h) of sub-clause (2) the workers attending to power plant or transmission machinery have also been included for purposes of exemption ."[1]

65. Power to make exempting orders.—(*1*) Where the Provincial Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(*2*) The Provincial Government or, subject to the control of the Provincial Government, the Chief Inspector, may by written order exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(*3*) Any exemption given under sub-section (*2*) in respect of weekly hours of work shall be subject to the maximum limits prescribed under sub-section (*4*) of section 64.

(*4*) No factory shall be exempted under sub-section (*2*) for a period or periods exceeding in the aggregate three months in any year.

This section corresponds to section 44 of the old Act.

66. Further restrictions on employment of women.—(*1*) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely :—

(*a*) no exemption from the provisions of section 54 may be granted in respect of any woman;

1. Notes on clauses.

(*b*) no woman shall be employed in any factory except between the hours of 6 A. M. and 7 P. M.:

Provided that the Provincial Government may, by notification in the official Gazette, in respect of any class or description of factories, vary the limits laid down in clause (*b*), but so that no such variation shall authorise the employment of any woman between the hours of 10 P. M. and 5 A. M.

(*2*) The Provincial Government may make rules providing for the exemption from the restrictions set out in sub-section (*1*), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.

(*3*) The rules made under sub-section (*2*) shall remain in force for not more than three years at a time.

Comments.

This section corresponds to section 45 of the old Act.

"The second proviso in sub-section (1) of the existing section 45 has been omitted to conform to the deletion of the distinction between 'seasonal' and non-seasonal' factories."[1]

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1. Notes on clauses.

CHAPTER VII.

EMPLOYMENT OF YOUNG PERSONS.

67. Prohibition of employment of young children.— No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

Comments.

This section corresponds to section 50 of the old Act.

Under the old Act a child below twelve years of age was not allowed to work in any factory. That minimum age has now been raised to fourteen.

68. Non-adult workers to carry tokens. - A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless—

(*a*) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and

(*b*) such child or adolescent carries while he is at work a token giving a reference to such certificate.

Comments.

It corresponds to section 51 of the old Act.

allowed to work in a factory:-

Where children were employed for purposes of sorting ground-nuts in a yard close to a room where machinery for decortication of ground-nuts was used held that the children were employed in a factory.[1]

69. Certificate of fitness.—(*1*) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

(*2*) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew—

(*a*) a certificate of fitness to work in a factory as a child, if

1. 28 Cr. L.J. 267. In re Ramanadhan.

he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;

(*b*) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory:

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(*3*) A certificate of fitness granted or renewed under sub-section (*2*),—

(*a*) shall be valid only for a period of twelve months from the date thereof;

(*b*) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(*4*) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (*2*) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(*5*) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

(*6*) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (*b*) of sub-section (*3*), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(*7*) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Comments.

The existing section 52 has been redrafted and the provisions regarding the examination and reexamination of young persons and grant of certificates of fitness to them tightened. To avoid unnecessary work of the certifying Surgeon it has also been provided that he will examine only those young persons who produce a certificate from the Manager that he will be employed in his factory if found fit."[1]

70. Effect of certificate of fitness granted to adolescent.

(*1*) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (*b*) of sub-section(*2*) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII

(*2*) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (*b*) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

Comments.

It corresponds to section 53 of the old Act.

The cumulative effect of sections 67, 68 and 70 is a follows:-

A person below the age of fourteen cannot be allowed or required to work in a factory under any circumstances. A person who has completed his fourteenth year but not the fifteenth (i. e., a child of fourteen or more) can be allowed to *work as a child* if certified fit by a certifying surgeon. A person who has completed his fifteenth year but not the eighteenth (i. e. an adolescent) can be employed in one of the two ways: if the certifying surgeon certifies him to be fit for working as an adult he can be employed as an adult and all provisions relating to hours of work etc would apply to him. If, however, he is given a certificate of fitness only to work as a child he can be employed only *as a child* and would be deemed to be a child for the purposes of the whole Act. This shows that the adolescent remains in a separate category only before his examination. After the certifying surgeon examines him he becomes either a child or an adult for the purposes of the Act.

71. Working hours for children.—(*1*) No child shall be employed or permitted to work, in any factory—

(*a*) for more than four and a half hours in any day;

1. Notes on clauses.

(*b*) between the hours of 7 P. M. and 6 A. M.

(*2* The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(*3*) The provisions of section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child.

(*4*) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

Comments.

"As the hours of work of adults have been reduced to nine, the half-time period of a child has also been reduced to four and half hours. The existing section 54 has been redrafted to provide for this change. A new sub-clause has also been added to prevent overlapping shifts in the case of children".[1]

72. Notice of periods of work for children.-(*1*) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (*2*) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

(*2*) The periods shown in the notice required by sub-section(*1*) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

(*3*) The provisions of sub-sections (*8*), (*9*) and (*10*) of section 61 shall apply also to the notice required by sub-section (*1*) of this section.

Comments.

This section corresponds to section 55 of the old Act.

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1 Notes on clauses.

"Sub-section (4) of the existing section has been omitted as it is covered by sub-clause (ē) of clause 61."[1]

73. Register of child workers.—(*1*) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing—

(*a*) the name of each child worker in the factory,

(*b*) the nature of his work,

(*c*) the group, if any, in which he is included,

(*d*) where his group works on shifts, the relay to which he is allotted and

(*e*) the number of his certificate of fitness granted under section 69.

(*2*) The Provincial Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Comments.

This section corresponds to section 56 of the old Act.

"As in the case of clause 62, it has been made obligatory on the part of the Manager to make available the Registers to the Inspector at all times during working hours."[2]

74 Hours of work to correspond with notice under section 72 and register under section 73.—No child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

It corresponds to section 57 of the old Act.

75. Power to require medical examination.—Where an Inspector is of opinion—

(*a*) that any person working in a factory without a certificate of fitness is a young person, or

(*b* that a young person working in a factory with a certificate

1. Notes on clauses. | 2. Notes on clauses.

of fitness is no longer fit to work in the capacity stated therein,—

he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

It corresponds to section 58 of the old Act.

76. Power to make rules.—The Provincial Government may make rules—

(*a*) prescribing the forms of certificates of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;

(*b*) prescribing the physical standards to be attained by children and adolescents working in factories;

(*c*) regulating the procedure of certifying surgeons under this Chapter;

(*d*) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

It corresponds to section 59 of the old Act.

77. Certain other provisions of law not barred.—The provisions of this Chapter shall be in addition to and not in derogation of, the provisions of the Employment of Children Act, 1938 (XXVI of 1938).

Comments.

It corresponds to section 59 C of the old Act.

An important provision of the Employment of Children Act, 1938

(XXVI of 1938) is to raise the minimum age of a child employed in the handling of goods on Railways and at Ports to fifteen years. That provision would remain unaffected. Another provision of this Act prescribes that no child who has not completed his twelfth year shall be employed in any of the following ten occupations—

1. Bidi making.
2. Carpet making.
3. Cement manufacture.
4. Cloth printing, dyeing and weaving.
5. Manufacture of matches, explosives and fireworks.
6. Mica cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool cleaning.

CHAPTER VIII.

LEAVE WITH WAGES.

"The side of Factory legislation that has made most progress during the last twenty years in the Western industrial nations has been that concerned with industrial health, but it has to be admitted that very little progress has been made in India towards the protection of the worker against industrial disease or towards the real certification of young persons before employment in factories. The new Bill makes radical suggestions for advances in this field. Provision has been made for a more adequate examination of young persons before they can be employed by requiring that the certifying surgeon must see or be familiar with the actual place of work and the process in which the young person is to be employed. The certification of these young persons must be reviewed yearly until they reach the age of eighteen, a provision that ensures medical examination for these young persons during a critical period of their lives and one that is in advance of the legislation in many other countries."[1]

78. Application of Chapter.—(*1*) The provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement or contract of service:

Provided that where such award, agreement or contract of service provides for a longer leave with wages than provided in this Chapter the worker shall be entitled only to such longer leave.

Explanation.—For the purpose of this Chapter leave shall not, except as provided in section 79, include weekly holidays or holidays for festivals or other similar occasions.

(*2*) The provisions of this Chapter shall not apply to any workshop of a Federal Railway.

Comments.

"The reference to 'seasonal factory' in the existing section 49 A has been omitted and that section has been redrafted....."[2]

Sub—section 2.

"The leave rules of the Federal Railways are more liberal than the provisions of this Act and, therefore, we have provided that the provisions of Chapter VIII shall not apply to any workshop belonging to a Federal Railway."[3]

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1. Sir Wilfried Garret, Formerly Chief Inspector of Factories, U. K., Problems of Indian labour No.2, P.17
2. Notes on clauses.
3. Report of the Select Committee.

79 Annual leave with wages.—(*1*) Every worker who has completed a period of twelve months' continuous service in a factory shall be allowed during the subsequent period of twelve months' leave with wages for a number of days calculated at the rate of—

(*i*) if an adult, one day for every twenty days of work performed by him during the previous period of twelve months subject to a minimum of ten days, and

(*ii*) if a child, one day for every fifteen days of work performed by him during the previous period of twelve months subject to a minimum of fourteen days:

Provided that a period of leave shall be inclusive of any holiday which may occur during such period:

Provided further that where the employment of a worker who has completed a period of four months' continuous service in a factory is terminated before he has completed a period of twelve months' continuous service, he shall be deemed to have become entitled to leave for the number of days which bears to the number of days specified in this sub-section the same proportion as the period of his continuous service bears to the continuous service of twelve months and the occupier of the factory shall pay to him the amount payable under section 80 in respect of the leave to which he is deemed to have become entitled.

(*2*) If a worker does not in any one such period of twelve months take the whole of the leave allowed to him under sub-section (*1*), any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in the succeeding period of twelve months:

Provided that the total number of days of leave which may be carried forward to a succeeding period shall not exceed fifteen in the case of an adult or twenty in the case of a child:

Provided further that a worker who has applied for leave with wages but has not been given such leave in accordance with any scheme drawn up under sub-sections (*4*) and (*5*), shall be entitled to carry forward the unavailed leave without any limit.

(3) A worker may in any such period of twelve months apply in writing to the manager of the factory, not less than fifteen full working days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof, allowable to him during that period under sub-sections (1) and (2):

Provided that the number of instalments in which the leave is proposed to be taken shall not exceed three:

Provided further that the application shall be made not less than thirty full working days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947).

(4) If, for the purpose of ensuring the continuity of work in a factory, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under section 3 of the Industrial Disputes Act, 1947 (XIV of 1947) or a similar committee constituted under any other Act, or if there is no such Works Committee or a similar committee in the factory, the occupier or the manager of the factory in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the leave allowable under this section may be regulated

(5) A scheme lodged under sub-section (4) shall be posted in convenient places in the factory and shall be in force for a period of twelve months from the date on which it is lodged with the Chief Inspector, and may thereafter be renewed, with or without modification, for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar committee or, as the case may be, by the manager of the factory in agreement with the representatives of the workers as specified in sub-section (4).

(6) An application for leave which does not contravene the provisions of sub-section (3) shall not be refused unless the refusal is in accordance with a scheme for the time being in operation under sub-sections (4) and (5).

(7) If a worker entitled to leave under sub-sections (1) and (2) is discharged from the factory before he has taken the entire leave to which he is entitled, or if, having applied for and having not been granted such leave, he quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken and such payment shall be made before the expiry of the second working day after the day on which his employment is terminated.

Explanation 1.—For the purposes of this section, a worker shall be deemed to have completed a period of continuous service in a factory, notwithstanding any interruption in service during that period brought about by—

(*i*) sickness, accident or authorised leave not exceeding in the aggregate one-sixth of the period, or

(*ii*) a strike which is not an illegal strike or a lock out, or

(*iii*) one or more periods of involuntary unemployment not exceeding in the aggregate one-twelfth of the period, or

(*iv*) leave admissible or granted under any other law.

Explanation 2.—"Authorised leave" shall include any casual absence due to any reasonable cause:

Provided that the worker within a week from the commencement of the absence gives the reasons for the absence in writing to the manager of the factory, and may include periods of unauthorised leave, not exceeding in the aggregate one-thirty-sixth of the period of continuous service, but shall not include any weekly holiday allowed under section 52 which occurs at the beginning or end of an interruption brought about by the leave.

Explanation 3.—"Illegal strike" means a strike which is illegal within the meaning of section 24 of the Industrial Disputes Act, 1947 (XIV of 1947) or of any other law for the time being in force relating to industrial disputes

Comments.

"The existing Section 49 B has been completely recast and expanded to remove the practical difficulties which were experienced in its working."[1] It provides for the grant of holidays in three spells to cover

1. Notes on clauses.

the needs of workers. It also provides for the grant of proportionate holidays to workers whose services have been terminated but who have completed four months' continuous service.

Provision has also been made for condoning unauthorised absence not exceeding in the aggregate one-thirty-sixth of the period of continuous service.

Public utility service :

Section 2 (*n*) of the Industrial Disputes Act 1947 (XIV of 1947) defines public utility service as follows-

"(*n*) Public Utility Service" Means—

(*i*) Any railway service;

(*ii*) Any section of the Industrial Establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(*iii*) Any postal, telegraph, or telephone service:

(*iv*) Any Industry which supplies power, light or water to the public;

(*v*) Any system of public conservancy or sanitation;

(*vi*) Any Industry specified in the schedule which the appropriate Government may, if satisfied that the public interest so requires, by notification in the Official Gazette declare to be a public utility service for the purposes of this act, for such period as may be specified in the notification :

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any time if in the opinion of the appropriate government public emergency or public interest requires such extension."

or a similar committee :—

A joint committee constituted under section 48 of the Bombay Industrial Relations Act 1946 (XI of 1947) would be a similar committee within the meaning of this expression.

illegal strike :—

Section 2 (q) of the Industrial Disputes Act 1947 (Central) (XIV of 1947) defines 'strike' as follows -

"(q) "Strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a con-

certed refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment."

Section 24 of the same Act prescribes what 'strikes' would be illegal. That section is as follows —

"24. Illegal strikes and lock-outs. (1) A strike or a lock-out shall be illegal if -

(*i*) It is commenced or declared in contravention of section 22 or section 23; or

(*ii*) It is continued in contravention of an order made under sub-section (3) of section 10.

(2) Where a strike or a lock-out in persuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a board, or tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this act or the continuance thereof was not prohibited under the sub-section (3) of section 10.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

Section 3 (36) of the Bombay Industrial Relations Act 1946 (XI of 1947) defines 'strike' as follows —

"(36) 'Strike' means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute."

Section 97 of the same Act says what 'strikes' would be illegal under the Act. It is as follows —

"97. (1) A strike shall be illegal if it is commenced or continued -

(a) In cases where it relates to an industrial matter specified in schedule III or regulated by any standing order for the time being in force;

(b) Without giving notice in accordance with the provisions of section 42;

(c) Only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change;

(d) In cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the conciliator for the industry concerned for the local area;

(e) In cases where conciliation proceedings in reagrd to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings;

(f) In cases where a special intimation has been sent under sub-section (2) of section 52 to the conciliator, before the receipt of the intimation by the person to whom it is to be given;

(g) In cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked;

(h) In cases where an industrial dispute has been referred to the arbitration of a labour court or the industrial court under sub-section (6) of section 58 or under section 71, or of the industrial court under section 72 or 7[1], before the date on which the arbitration proceedings are completed, or the date on which the award of the labour or industrial court, as the case may be, comes into operation, whichever is later;

(i) In contravention of the terms of a registered agreement, or a settlement or award.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days' notice of a strike not falling under clause (a), (g), (h), or (i) of sub-section (1) was given to the employer and the labour officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry, the employees who resume

work within forty eight hours of a labour court or the industrial court declaring such strike to be illegal shall incur no penalty under this act in respect of such strike :

Provided that nothing in sub-section (3) shall apply to any strike which has within the period of notice been declared under section 99 to be illegal."

Lock-out :—

Section 2 (i) of the Industrial Disputes Act 1947 (Central) (XIV of 1947) defines 'lock-out' as follows –

"(i) 'Lock-out' means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him."

Section 3 (24) of the Bombay Industrial Relations Act (XI of 1947) defines 'lock-out' as follows —

"(24) 'Lock-out' means the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the purpose of —

(a) Compelling any of the employees directly affected by such closing, suspension or refusal or any other employees of his, or

(b) Abiding any other employer in compelling persons employed by him, to accept any term or condition of or affecting employment."

It may be noted that any *lock-out whether legal or illegal* is covered by clause (ii) of explanation (1).

80. Wages during leave period.—For the leave allowed to him under section 79 a worker shall be paid at a rate equal to the daily average of his total full-time earnings, exclusive of any overtime earnings and bonus, but inclusive of dearness allowance and the cash equivalent of any advantage accruing by the sale, by the employer, of foodgrains and other articles at concessional rates, for the days on which he worked during the month immediately preceding his leave.

It corresponds to section 49 C of the old Act.

81. Payment in advance in certain cases.—A worker who has been allowed leave for not less than four days in the case of an adult and five days in the case of a child under section 79 shall, before his leave begins, be paid the wages due for the period of the leave allowed.

Comments.

This section corresponds to section 49 D of the old Act.

The advance payment has not been limited to half the total wages due for the period of leave as was the case under the old Act but full payment has been prescribed.

82. Power of Inspector to act for worker.—Any Inspector may institute proceedings on behalf of any workers to recover any sum required to be paid by an employer under this Chapter which the employer has not paid.

It corresponds to section 49 E of the old Act.

83. Power to make rules.—The Provincial Government may prescribe the keeping by managers of factories of registers showing such particulars as may be prescribed and requiring such registers to be made available for examination by Inspectors.

It corresponds to section 49 F of the old Act.

84. Power to exempt factories.—Where the Provincial Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion are not less favourable than those for which this Chapter makes provision, it may, by written order, exempt the factory from all or any of the provisions of this Chapter, subject to such conditions as may be specified in the order.

Comments.

It corresponds to section 49 G of the old Act.

The question whether the factory leave rules are not less favourable than those provided in the Act is left to be decided by the Provincial Governments in future.

CHAPTER IX.

SPECIAL PROVISIONS.

"Workers in certain specified dangerous trades are to be protected by periodical madical examination, a provision that has done so much in other countries for the control of lead poisoning, silicosis, industrial cancers and the like. In addition, stricter provision is made to control processes that are known to produce industrial diseases and powers are given to the Provincial Governments to extend these provisions by Regulations as occasion demands. These new provisions naturally will require that the administration of this side of factory inspection must be overhauled by the appointment of certifying surgeons who can give more time of the work and (I hope) by the appointment, in every Province, of Medical Inspectors of Factories who will direct and assist the certifying surgeons in this work as well as carry out the duties of Inspectors from medical point of view.

A necessary step in this connection that will enable certifying surgeons and Medical Inspectors to know where the dangers lie is the reporting of industrial diseases by the occupiers of factories in the same manner as accidents are already reported. Provision to this end has been made in the Bill and it is also suggested that power should be taken to require general medical practitioners to report to the Provincial Chief Inspector all cases of scheduled industrial diseases that come to their notice with particular of the place of employment of the patient involved. Only by the building up of statistics in this way will the medical profession, research workers and others interested be able to get to know and to study the special problems of India in this field, and to take the necessary steps for the prevention of these diseases".[1]

85. Power to apply the Act to certain premises.—(*1*) The Provincial Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that—

(*i*) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

1. By Sir Wilfried Garrett, formerly Chief Inspector of Factories, U.K. | Problems of Indian labour No. 2., p, 17.

(*ii*) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(*2*) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Explanation.—For the purposes of this section, "owner" shall include a lessee or mortgagee with possession of the premises.

Comments.

This section corresopnds to section 59A and 59B of the old Act which have been thoroughly overhauled.

This section is intended to empower the Provincial Government to apply this Act either wholly or partially to work places which are not covered by the definition of 'factory' as given in section 2(m). But places in which the 'manufacturing process' is being carried on only with the aid of the owner's family are excluded from the scope of this section.

All or any of the provisions of this Act.

The use of this expression would suggest that the Provincial Government can make a declaration that only particular provisions of this Act would apply to any work place. But after such a declaration is made the work place concerned has to be deemed, by virtue of sub-section 2, to be a 'factory' for the purposes of this Act.

An interesting question then would arise as to whether a workplace which is deemed to be a factory under this Act can remain free from those provisions of the Act which may have been omitted by the Provincial Government in its declaration.

Family.

It is submitted that the word 'family' includes within its scope household or domestic servants also.

86 Power to exempt public institutions.—The Provincial Government may exempt subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, training or reformation, from all or any of the provisions of this Act:

Provided that no exemption shall be granted from the provisions relating to hours of work and holidays, unless the persons having the control of the institution submit, for the approval of the Provincial Government, a scheme for the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or attending the institution or who are inmates of the institution, and the Provincial Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of this Act.

Comments.

This is totally a new section.

It should be noted this section is restricted to such public institutions as are maintained for the purposes of education, training or reformation.

Public.

The word 'public' is defined as 'of concerning the people as a whole'.

87 **Dangerous operations.**—Where the Provincial Government is of opinion that any operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the operation is carried on —

(*a*) specifying the operation and declaring it to be dangerous;

(*b*) prohibiting or restricting the employment of women, adolescents or children in the operation;

(*c*) providing for the periodical medical examination of persons employed, or seeking to be employed, in the operation, and prohibiting the employment of persons not certified as fit for such employment;

(*d*) providing for the protection of all persons employed in the operation or in the vicinity of the places where it is carried on;

(*e*) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the operation.

Comments.

The heading of the existing section 33(4) has been changed from Hazardous operations' to 'Dangerous operations' and a new sub-clause enabling the Provincial Governments to make rules prohibiting; restrict-

ing or controlling the use of any specified materials or processes in connection with the dangerous operations has been added."[1]

88 Notice of certain accidents.—Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to so such authorities, and in such form and within such time as may be prescribed.

Comments.

It corresponds to section 30 of the old Act.

Person includes plural.

The word person includes the plural and consequently where as a result of a single accident more persons than one are injured the accident cannot be split up into a many persons injured and the notice contemplated is single notice of the accident which the manager is required to submit to the authorities and therefore contravention of this rule is one offence which cannot in its turn be split up into as many offences as the number of casualties.[2]

Occupier and manager both liable.

The duty to inform the authorities under the Act is laid on the manager. It is, therefore, primarily the manager who is to be supposed to have contravened the provision of the Act but both the 'occupier' and manager are made responsible jointly and severally for this contravention.[3]

89. Notice of certain diseases.—(*1*) Where any worker in a factory contracts any disease specified in the Schedule, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(*2*) If any medical practitioner attends on a person who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be, suffering from any disease specified in the Schedule, the medical practitioner shall without delay send a report in writing to the office of the Cheif Inspector stating—

1. Notes on clauses.
2. 31. Cr.L.J. 869, Wazirchand and another Vs. Emperor.
3. A.I.R 1930 (Lahore) 658, Wazirchand and another Vs. Emperor

(*a*) the name and full postal address of the patient,

(*b*) the disease from which he believes the patient to be suffering, and

(*c*) the name and address of the factory in which the patient is, or was last, employed.

(*3*) Where the report under sub-section (*2*) is confirmed to the satisfaction of the Chief Inspector, by the certificate of a certifying surgeon or otherwise; that the person is suffering from a disease specified in the Schedule, he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land-revenue from the occupier of the factory in which the person contracted the disease.

(*4*) If any medical practitioner fails to comply with the provisions of sub-section (*2*), he shall be punishable with fine which may extend to fifty rupees.

Comments.

"This is a new clause which has been inserted with a view to control industrial diseases".[1]

90. Power to direct enquiry into cases of accident or disease.—(*1*) The Provincial Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Schedule has been, or is suspected to have been, contracted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(*2*) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information shall be deem-

1. Notes on clauses.

ed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (XLV of 1860).

(3) The person holding an inquiry under this section shall make a report to the Provincial Government stating the causes of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make.

(4) The Provincial Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.

(5) The Provincial Government may make rules for regulating the procedure at inquiries under this section.

Comments.

"This is a new clause. It empowers the Provincial Governments to require a formal investigation in the case of serious accidents." [1]

91. Power to take samples.—(1) An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in charge of the factory, take in the manner hereinafter provided a sufficient sample of any substance used or intended to be used in the factory, such use being-

(a) in the belief of the Inspector in contravention of any of the provisions of this Act or the rules made thereunder, or

(b) in the opinion of the Inspector likely to cause bodily injury to, or injury to the health of, workers in the factory.

(2) Where the Inspector takes a sample under sub-section (1), he shall, in the presence of the person informed under that sub-section unless such person wilfully absents himself, divide the sample into three portions and effectively seal and suitably mark them, and shall permit such person to add his own seal and mark thereto.

(3) The person informed as aforesaid shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

1. Notes on clauses.

(4) The Inspector —

(a) forthwith give one portion of the sample to the person informed under sub-section (1);

(b) forthwith send the second portion to a Government Analyst for analysis and report thereon;

(c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

(5) Any document purporting to be a report under the hand of any Govrenment Analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceedings instituted in respect of the substance.

Comments.

"This is a new clause intended to facilitate investigation of cases involving contravention of the safety provisions."[1]

1. Notes on clauses.

CHAPTER X.

PENALTIES AND PROCEDURE

"Another chief reason why evasions of the Act are still common is that the offenders are generally punished lightly, especially by Moffusil Courts. In this connection the Royal Commission observed, 'in the majority of the Provinces there are numerous cases of inadequate fines particularly for repeated offences; not infrequently the fine is smaller than the profit made by the offender out of the offence'. There has been no improvement in this respect since the time of the Royal Commission.... .....The award of light punishments encourages offenders to defy the law instead of having any salutary effect on them,"[1]

Administration of the Factories Act.

"The Factories Act has given wide discretionary powers to Chief Inspectors and other inspectors of factories in the matter of instituting prosecutions in cases where there have been infringements of factory rules. In our opinion prosecution should, under such circumstances, be the rule and not an exception. The evidence given before us by inspectors and chief inspectors of factories is that courts are not inclined to impose heavy fines for offences under the Factories Act. While we are not in a position to verify those statements we must record our opinion that violations of the Factories Act and of the rules made under it should not be regarded leniently and that deterrent punishment is necessary in such cases."[2]

92. General penalty for offences.—Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued.

Comments.

" The existing section 60 has been redrafted with a view to make the breach of any section or of any rule or order made under the Act

1. Main report 45. | 2 Bhore Committee report Vol. I, 86.

an offence which can be punished with imprisonment or fine or with both."[1]

This section would not apply to those offences for which a specific penalty has been provided by one or other section of this Act.

Construction ot Section.

Factory Acts should be properly enforced for the protection of workmen but on the other hand one must also bear in mind that the employers' position has to be considered too. It may be that without any negligence on their part defects will exist in their factories but if they are to be proceeded against in a criminal court for alleged negligence then it would seem that the matter be clearly brought home to them.[2]

Separate offences.

If more than one person is unlawfully employed the manager and agent are liable for as many offences as there are persons so employed.[3]

Liability of an occupier.

The owners and occupiers of a factory cannot relieve themselves of their responsibilities regarding compliance with the requirements of the Factories Act by appointing a manager. They must see that the manager carries out his duties. It is only when the manager has acted in express disobedience of their order and they have done their best to see that the provisions of the Act are complied with, that they can themselves escape liability. The section makes it clear that both the manager and the occupier are liable. A manager is not a managing Agent within the meaning of the expression as used in the definition of occupier and hence cannot be deemed to be the occupier of the factory. The fact that the occupiers were ignorant persons who trusted to the knowledge and good sense of their manager may be a ground for awarding a smaller punishment but not for acquitting them.[4]

Intention not material.

Where the manager is prosecuted under section 60 (present section 92) read with section 42 (present section 63) for allowing work to be done beyond a prescribed period it is no defence to plead that the accused acted in good faith honestly believing in the clock in the factory to be correct and that he is protected by section 81 (present section 117). It is enough in a prosectuion under the Act to prove that the

1. Notes on clauses.
2. 26 Cr. L. J 482. Narayan Anant Desai Vs. Emperor.
3. 45 Bom. 220. Emperor Vs. Vrijvallubhdas Jekisondas.
4. A. I. R. 1942 (Mad.) 347. Public Prosecutor, Vs. S. Papanna and others.

accused has infringed the Act or rules under the Act and it is not necessary to show that the accused intended to infringe the Act or the Rules.[1]

Notice before prosectuion not necessary.

It is not necessary that an order or notice from the Inspector of Factories should be issued to a person who has not conformed to the Rules made under the Act before he can be charged for any offence under it. It is the duty of such person to obey the Rules and in case of disobedience he becomes liable to conviction whether there was any order or not from the Inspector calling upon him to obey the Rules.[2]

Need for deterrent punishment.

Penalties in cases against factory owners who are exploiting labour must be deterrent especially in view of the fact that detection is frequently avoided.[3]

Benefit of section 117.

Where acting on the assurance of the authorities concerned a factory doing urgent military orders works overtime fully believing that the necessary exemption would be given and the manager and occupier of the factory cannot be convicted of an offence under section 60 (present section 92) of the Factories Act. The case is covered by section 81 (present section 117).[4]

It is submitted with due respect that this view is not correct. Section 81 (present section 117) does not apply to a manager. It was inserted primarily if not entirely for the benefit of the Inspecting staff. It cannot be said that the Manager is *acting under the* Act. (See also 1938 L. J. 217).

To be construed strictly.

The section is a penal one and ought to be construed strictly.[5]

Continued contravention.

It may be noted that this section lays down a further penalty *for the continuation* of the contravention of any provision of this Act or of any rule made thereunder or of any order in writing. But if any person who has been convicted of any offence punishable under this section *is again guilty* of an offence involving a contravention of the same provision he shall be liable to an enhanced penalty as laid down in section 94.

1. A. I. R. 1938 (Nagpur) 406, Provincial Government C. P. and Berar Vs. Seth Chapasi Dhanaji Oswal Bhate and another.
2. 12. Bom. L. R. 225. Emperor, Vs. Banoomian Pirbhai.
3. 19. Nagapur Law Journal 247.
4. A. I. R. 1943 Oudh 308 Ranjit Sing Vs. Emperor.
5. I. L. R. 45 Bom. 220. Emperor Vs. Vrijvallubhdas Jekisondas.

93. Liability of owner of premises in certain circumstances.—Where in any premises separate buildings, or in any building separate parts of the building or separate parts of any room therein are leased or occupied by different persons in such a manner as to constitute separate factories, the owner of the premises or building, as the case may be, shall be liable, in the stead of the occupier of the factory for any contravention in, or in respect of, any part of the premises or building which is used as a factory, of—

(*a*) the provisions of Chapter III or of any rules made thereunder;

(*b*) the provisions of Chapter IV or of any rules made thereunder, except in so far as they relate to plant or machinery belonging to or supplied by the occupier of the factory;

(*c*) the provisions of Chapter V or of any rules made thereunder, and in computing for the purposes of any of the provisions mentioned in this clause the number of workers employed, the whole of the premises or building, as the case may be, shall be deemed to be a single factory:

Provided that—

(*i*) the provisions of this section shall not apply to, or in respect of, any building or room in the sole occupation of the occupier of a factory;

(*ii*) the aforesaid owner shall be liable for any contravention of any of the provisions of this Act or of the rules made thereunder relating to the cleanliness of sanitary conveniences only when those conveniences are used by workers of more than one occupier;

(*iii*) the aforesaid owner shall be liable for any contravention of any of the provisions of this Act or of the rules made thereunder relating to hoists and lifts, and means of escape and safety precautions in case of fire, only in so far as the said provisions relates to things under his control.

Comments.

"This is a new clause defining the liability of the owner of premises certain circumstances".[1]

94. **Enhanced penalty after previous conviction.**— If any person who has been convicted of any offence punishable under section 92 is again guily of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Comments.

"We have simplified the clause and provided for a uniform enhanced penalty after the first conviction"[2]

Contravention of the same provision.

It may be noted that this provision for enhanced penalty would apply only when a person is found again guilty of an offence involving *a breach of the same provision.* A mere previous conviction under this Act is not sufficient to bring into operation this section unless it can be shown that on a previous occasion the accused was found guilty of contravening the same provision (the same provision of the section or the same rule or a similar order) of the Act.

95. **Penalty for obstructing Inspector.**—Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

Comments.

This section corresponds to section 63 of the old Act.

1. Notes on clauses. | 2. Select Committee Report.

Vicarious responsibility.

No sort of a vicarious responsibility is recognised by this Act in respect of offences referred to in the section. Where the Assistant Manager failed to produce register on demand by the Inspector alleging that the same is with the manager who has left the office, the manager cannot be convicted under this section even if he was really hiding himself in the factory in order to avoid meeting the Inspector.[1]

96. Penalty for wrongfully disclosing results of analysis under section 91.—Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

Comments.

"This is a new clause prescribing penalty for disclosing the results of analysis made under clause 91".[2]

97. Offences by workers.—(*1*) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to twenty rupees.

(*2*) Where a worker is convicted of an offence punishable under sub-section (*1*), the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Comments.

"This is a new clause prescribing penalty for offences committed by workers."[3]

The section under which duties or liabilities are imposed on workers are the following.

19(3), 20, 22, 23, 36(5), 47, 98, 111.

In addition to the above sections there may be rules made by vari-

1. 41. C.W.N. 740., R R. Das Vs. The Emperor.
2. Notes on clauses.
3. Notes on clauses.

ous Provincial Governments under different sections imposing duties and liabilities on workers.

This section would not apply to an offence under section 20 on the general principle that a specific provision always prevails over the general.

98 Penalty for using false certificate of fitness.— Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees or with both.

Comments.

This section corresponds to section 67 of the old Act.

Under the old section there was no provision for imprisonment for this offence.

99. Penalty for permitting double employment of child.- If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to fifty rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

Comments.

This section corresponds to section 68 of the old Act.

"The words 'on guardian' have been omitted from the heading."[1]

100. Determination of occupier in certain cases.— (*1*) Where the occupier of a factory in a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members, residing within the Provinces of India to be the occupier of the factory for the

1. Notes on clauses.

purposes of this Chapter, and such individual shall, so long as he so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Provided that the company may give notice to the Inspector that it has nominated a director, or in the case of a private company, a shareholder, who is resident in either case within the Provinces of India, to be the occupier of the factory for the purposes of this Chapter, and such director or shareholder, as the case may be, shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder.

(3) Where the owner of any premises or building referred to in section 93 is not an individual, the provisions of this section shall apply to such owner as they apply to occupiers of factories who are not individuals.

Comments.

This section corresponds to section 70 of the old Act.

"The heading has been slightly changed and a new sub clause (3) added to cover the case of buildings owned by companies, etc."[1]

101. Exemption of occupier or manager from liability in certain cases.—Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if; after the commission of the

1. Notes on clauses.

offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court—

(*a*) that he has used due diligence to enforce the execution of this Act, and

(*b*) that the said other person committed the offence in question without his knowledge, consent or connivance,—

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the occupier or manager cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved convict the occupier or manager.

Comments.

"The existing section 71 has been recast and the provision made more definite." [1]

Scope of the section.

By this section a *prima facie* liability is imposed upon the occupier or the manager from which however he can extricate himself otherwise he remains liable. The scheme of the Act is first to find the *de-facto* employer; an information may be laid against the occupier, his way of escape is provided for by this section. He may set up a defence not unlike the defence of warranty which the seller of food may set up un-

1. Notes on clauses.

der the English Sale of Food and Drugs Act. He may show that the offence was not committed by his fault. To do this he must bring the real offender before the court. [1]

Not a mere attempt to exculpate himself.

This section provides a remedy for a occupier or manager who is the victim of some other person's neglect; but he must take a certain step to assure the culprit's conviction and not merely attempt to exculpate himself.

Onus.

The person who claims the exemption from liability on the ground that he used due diligence and that another person than himself was responsible for the offence has the onus on him to show that he comes within the provision of the section.[2]

Effect, practice and procedure.

The effect of the section is to split up one criminal proceeding into two; one carried on by the Inspector of Factories and another by the manager or the occupier. The manager or occupier in his capacity as the complainant is entitled to testify against the person charged by him and is liable to be cross examined. But the carriage of proceedings remains with the original complainant viz., the Inspector of Factories on whom lies the onus of proving that the offence has been committed. In this proceeding both parties complained against viz., the manager or the occupier and the third party brought into court at their instance are entitled to cross examine the prosecution witnesses and to lead evidence to disprove the charge..... If the commission of the offence itself is not proved both parties complained against must be acquitted. The Law holds the manager and the occupier primarily responsible for enforcing the Factories Act and they cannot escape their liability to prove due diligence or commission of the offence without their knowledge, consent or connivance and without adducing affirmative proof in that behalf. They cannot, therefore, be deemed to have exculpated themselves only because the actual offender admits that he has committed the offence.[3]

The actual offender would be entitled to call evidence but not give evidence himself. The difference in procedure is due to the fact that the actual offender occupies the role only of an accused whereas the occupier or a manager at this stage besides being an accused has to discharge the onus of positive proof required by this section and in all

1. Ward Vs. Smith (1913) 3, K. B. 151.
2. 40 Cr. L. J 160. Gursaran Lall and another Vs. Emperor.
3. 1943 N. L. J. 399,

probability he alone is capable of proving certain fact of which proof is thereby required. The Crown which has initiated the proceedings and has throughout retained the carriage of the proceedings is entitled at thi stage to cross examine the occupier or the manager if he gives evidence, and any witness called by him in support of his charge and to call rebutting evidence. The Magistrate has no power to convict the actual offender or discharge the occupier or manager until the proof envisaged by this section is before him, although the former pleads guilty to the charge against him.[1]

Proviso to sub-section 1.

It may be noted that under the old section as there was no specific provision entitling the occupier or manager to give evidence on oath and making his evidence subject to cross examination by the person charged as the actual offender and by the prosecution, there was scope for the plea that the occupier or manager being accused persons could not give evidence on oath or be cross examined. Such plea, however, is rejected in the decision cited above. However to put any doubt at rest this section lays down in clear terms that the manager or occupier may be examined on oath and his evidence shall be subject to cross examination both by the actual offender and the prosecutor.

No conviction when no deliberate breach.

When in factory there was a delay of a few minutes in posting the attendance register though the occupier has appointed a well paid and efficient manager and there was no deliberate breach of the Rule it was held that there could be no conviction under section 60 (present section 92) and that the occupier was entitled to the benefit of section 71 (present section 101). [2]

102. Power of Court to make orders.—(*1*) Where the occupier or manager of a factory is convicted of an offence punishable under this Act the Court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order (which the Court may, if it thinks fit and on application in such behalf, from time to time extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

1 I. L. R. 1940, 1, Cal. 120. Legal Remembrancer Bengal Vs. I. N. Birla.

2. 1943, Oudh 311. Ranajit Sing and another Vs. Emperor.

(2) Where an order is made under sub-section 1), the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be, the order of the Court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefor by the Court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine, as aforesaid.

Comments.

" This is a new clause which empowers the courts to pass orders on the occupiers or managers of factories to take such measures for remedying the matter in respect of which offence was committed."[1]

This is a novel feature introduced into the Act. Under the old Act though the Court had the power to punish the occupier or the manager on conviction for a breach of any of the provisions of the Act it had no power to require the offender to remedy the matters in respect of which the offence was committed, with the result that if an offender chose to take the risk of being convicted for the continuation of the offence under section 92 he could very well evade the responsibility of actually carrying out the provisions of the Act.

Under this section now the court in addition to awarding a punishment can, if it so deems fit, require the offender to set matters right. The failure to do so would then amount to a breach of the court's order and he would then be deemed to have committed a further offence and may be sentenced therefor under sub section (2) of this section.

Deemed to have committed a further offence.

It is submitted that section 94 which prescribes enhanced penalty after previous conviction would also be applicable to an offence under this section.

It should also be noted that the court is empowered to pass an order envisaged in sub section (1) even in respect of an offence which is punishable under section 94.

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1. Notes on clauses.

103. Presumption as to employment.—If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

Comments.

This section corresponds to section 72 of the old Act.

Onus of emloyment.

This section throws the onus of proving that a person found in a factory when the work is going on or the machinery is in motion was not employed in the factory on the accused. It would be obviously difficult in such cases for the prosecution to prove that the person was an employee in the factory.

104. Onus as to age.—(*1*) When any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court *prima facie* under such age, the burden shall be on the accused to prove that such person is not under such age.

(*2*) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.

Comments.

This section corresponds to section 73 of the old Act.

When a person appears to the court to be under a certain age a presumption is raised by this section that he is deemed to be under the age until the contrary is proved. In such a case the onus would be on the accused to establish condusively that the person is not under that age. Moreover a written declaration by a certifying surgeon who believes him to be under a certain age has been made admissible as evidence of the age of the worker.

105. Cognizance of offences.—(*1*) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(*2*) No Court below that of a Presidency Magistrate o of a

Magistrate of the first class shall try any offence punishable under this Act.

Comments.

This section corresponds to section 74 of the old Act.

Summons cases.

offences under this would be triable as "summons case" because no section of the Act prescribes a penalty of death, transportation or imprisonment for a term exceeding six months:—

Non-cognisable cases.

These are also not 'cognisable offences' within the meaning of section 4(f) of the Criminal Procedure Code. The Act also does not provide that the offences under the Act shall be 'congnizable offences'.

But the prosecution under this Act can be instituted only by or with the previous sanction *of, in writing* of an Inspector. It would appear that any person can file a complaint directly in the court provided the necessary sanction of the Inspector is obtained.

Section 8 of this Act provides for the appointment of Inspectors for the purposes of this Act.

Trial.

Cases regarding any offence punishable under this Act are triable only by a Presidency Magistrate or of a 'Magistrate of the First Class having local' jurisdiction within which the offence is alleged to have been committed.

It would appear that the trying Magistrate if he is invested with power of a summary trial may if he so thinks fit try offenders under this Act in a summary way under section 260 of the Criminal Procedure Code because no offence under this Act is punishable with imprisonment for a term exceeding six months.

Appeals.

For appeals against conviction under this Act see sections 408, 413, 414 of the Criminal Procedure Code.

106. Limitation of prosecutions.—No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within

six months of the date on which the offence is alleged to have been committed.

Comments.

It corresponds to section 75 of the old Act.

Limitation.

In view of the great distances in India and the possible infrequency in the visits of Inspectors the period of limitation has been made to date from the time the offence came to the knowledge of the Inspector instead of the date of offence.

Under the old Act the prosecution could be instituted only within six months *from the date of offence.* The period of six months has now been changed to three but it is made to start from the date on which the offence came to the knowledge of the Inspector and not from the date when the offence was committed. The limitation period for the offence of disobeying the orders of an Inspector has been changed from twelve months to six and it is made to start from the date on which the offence is alleged to have been committed.

Rule of limitation peremptory.

The rule of limitation laid down in section 106 is peremptory and cannot be circumvented by any consideration imported from the Provisions of the limitation Act.[1]

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1. I. L. R. 1943 Nag 362., Provincial Government Central Provinces and Berar, Vs. Ganpat and others

CHAPTER XI.

SUPPLEMENTAL

107. Appeals.—(*1*) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory may, within thirty days of the service of the order, appeal against it to the prescribed authority, and such authority may, subject to rules made in this behalf by the Provincial Government, confirm, modify or reverse the order.

(*2*) Subject to rules made in this behalf by the Provincial Government (which may prescribe classes of appeals which shall not be heard with the aid of assessors), the appellate authority, may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed:

Provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

(*3*) Subject to such rules as the Provincial Government may make in this behalf and subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

It corresponds to section 31 of the old Act.

108. Display of notices.—(*1*) In addition to the notices required to be displayed in any factory by or under this Act, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder as may be prescribed and also the name and address of the Inspector and the certifying surgeon.

(2) All notices required by or under this Act to be displayed in a factory shall be in English and in a language understood by the majority of the workers in the factory, and shall be displayed at some conspicuous and convenient place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

(3) The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

Comments.

This section corresponds to section 76 of the old Act.

"The existing section 76 has been recast and a new sub clause (3) added which would enable (the Inspector to require Editors) the display of any notice or poster relating to health, safety and welfare of workers in a factory."[1]

Defence.

Where an employer is being prosecuted for supplying incorrect particulars, it is no defence to show that the workers could easily have ascertained their falsity.[2]

109. Service of notices.—The Provincial Government may make rules prescribing the manner of the service of orders under this Act on owners, occupiers or managers of factories.

Comments.

This is a new clause enabling the Provincial Governments to prescribe the manner of service of orders on occupiers or managers of factories."[3]

110. Returns.—The Provincial Government may make rules requiring owners, occupiers or managers of factories to submit such returns, occasional or periodical, as may in his opinion be required for the purposes of this Act.

This section corresponds to section 77 of the old Act.

111. Obligations of workers.—(1) No worker in a factory—

(a) shall wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the

1. Notes on clauses.
2. Nussey Vs. Britwistle (1894) 58. J. P., 735.
3. Notes on clauses.

purposes of securing the health, safety or welfare of workers therein;

(*b*) shall wilfully and without reasonable cause do anything likely to endanger himself or others; and

(*c*) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

(*2*) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

"This is a new clause defining the obligations of workers."[1]

112. General power to make rules.—The Provincial Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be coneidered expedient in order to give effect to the purposes of this Act.

"This is a new clause giving general powers to the Provincial Governments to frame rules."[2]

113. Powers of Centre to give directions.—The Central Government may give directions to a Provincial Goverhment as to the carrying into execution of the provisions of this Act.

"We consider that the Central Government should have a general power of direction to the Provincial Governments. This clause has been inserted accordingly."[3]

114. No charge for facilities and conveniences.—

Subject to the provisions of section 46 no fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided, or any equipments or appliances to be supplied by the occupier under the provisions of this Act.

This is a new section.

115. Publication of rules.—All rules made under this Act shall be published in the official Gazette, and shall be subject to

1. Notes on clauses | 2. Notes on clauses. | 3. Select Committee report.

the condition of previous publication; and the date to be specified under clause (*3*) of section 23 of the General Clauses Act, 1897 (X of 1897), shall be not less than three months from the date on which the draft of the proposed rules was published.

This section corresponds to section 79 of the old Act.

116. Application of Act to Government factories.—

Unless otherwise provided this Act shall apply to factories belonging to the Central or any Provincial Government.

This section corresponds to section 80 of the old Act.

117. Protection to persons acting under this Act.—

No suit, prosecution or other legal proceeding shall be against any person for anything which is in good faith done or intended to be done under this Act.

Comments.

This section corresponds to section 81 of the old Act.

This section does not apply to a manager. It was inserted primarily for the benefit of the Inspecting staff. It cannot be said that the Manager is acting under the Act.[1]

118. Restriction on disclosure of information.—(*1*) No Inspector shall, while in service or after leaving the service, disclose otherwise than in connection with the execution, or for the purposes, of this Act any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties.

(*2*) Nothing in sub-section (*1*) shall apply to any disclosure of information made with the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report of such proceedings as aforesaid.

(*3*) If any Inspector contravenes the provisions of sub-section (*1*) he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1. 1938 N. L. J. 217.

Comments.

This is a new clause which seeks to amend sub-section (3) of section 3 of the Employment of Children Act, 1938, by which the age of employment of children is raised from 12 to 14.

119. **Amendment of section 3, Act XXVI of** 1938.—In sub-section (*3*) of section 3 of the Employment of Children Act, 1938, for the word "twelfth" the word "fourteenth" shall be substituted.

This is a new clause.

120. **Repeal and savings.**—The enactments set out in the Table appended to this section are hereby repealed:

Provided that anything done under the said enactments which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act

TABLE

Enactments repealed.

Year	No.	Short titles.
1934	XXV	The Factories Act, 934.
1944	XIV	The Factories (Amendment) Act, 1944
1945	III	The Factories (Amendment) Act, 1945
1946	X	The Factories (Amendment) Act, 1946
1947	V	The Factories (Amendment) Act, 1947

THE SCHEDULE

(*See* sections 89 and 90)

List of Notifiable Diseases

1. Lead poisoning, including poisoning by any preparation or compound of lead or their sequelae.
2. Lead tetra-ethyl poisoning.
3. Phosphorus poisoning or its sequelae.
4. Mercury poisoning or its sequelae.
5. Manganese poisoning or its sequelae.
6. Arsenic poisoning or its sequelae.
7. Poisoning by nitrous fumes.
8. Carbon bisulphide poisoning.
9. Benzene poisoning, including poisoning by any of its homologues, their nitro or amido derivatives or its sequelae.
10. Chrome ulceration or its sequelae.
11. Anthrax.
12. Silicosis.
13. Poisoning by halogens or halogen derivatives of the hydrocarbons of the aliphatic series.
14. Pathological manifestations due to-
    (*a*) radium or other radio-active substances;
    (*b*) X-rays.
15. Primary epitheliomatous cancer of the skin.
16. Toxic anaemia.
17. Toxic jaundice due to poisonous substances.

This has been added with reference to sections 89 and 90.

Appendix I

A GUIDE
TO THE
SAFETY PROVISIONS
OF THE
FACTORIES ACT, 1948

ISSUED BY THE CHIEF ADVISER FACTORIES

Ministry of Labour, Government of India, New Delhi.

Table of Contents

A GUIDE TO THE SAFETY PROVISIONS OF THE FACTORIES ACT, 1948.

Introduction

The Factories Act, 1948, contains many new safety provisions of a high standard based on modern industrial practice, and the purpose of this pamphlet is to explain briefly and in simple non-legal language how some of these provisions are designed to meet certain types of danger, and to help employers and others concerned to find the changes or additions in the law which will affect them.

The Act does not come into force until 1st April 1949, but some considerable alteration of plant and equipment may be necessary in a number of cases, and employers would be well advised to read the relevant sections of the Act now, if they have not already done so, and to obtain any necessary expert advice, with a view to seeing that their factories are in conformity with the new law by this date. This pamphlet is intended only as a guide or pointer, and for detailed information as to the precise requirements, the reader is referred to the Act itself.

Responsibility of Occupier

Before considering the various safety provisions of the new Act, there is a very important point to note regarding the responsibility which the law now requires the factory occupier to take for the safety of his work-people.

In the past an Inspector visited a factory and notified to the occupier that certain parts of machinery or plant were dangerous and required him to provide suitable safeguards. This procedure tended to encourage some occupiers to leave their machines unfenced until the Inspector called and gave specific instructions in the matter. It is not, however, possible for the Inspectorate to arrange frequent visits to every individual factory, and the result has been that very serious accidents occured on machinery which was unfenced, simply because the occupier did not consider it to be dangerous or the Inspector had not visited and directed him.

The new law changes the procedure completly and, from now on the responsibility for safety matters is placed squarely on the shoulders of the occupier. In other words, the occupier must comply with the safety provisions of the Act without waiting for an Inspector to visit and give instructions for what ought to be done.

Many occupiers emphasise the difficulty of securing the proper maintenance of guards throughout a large factory, especially when work-people are opposed or indifferent to their use, and have expressed the opinion that, when guards have been provided and the work-people told to use them, the work-people themselves should be held responsible if the guards are not used. The difficulties experienced by employers in this matter are recognised and credit is due to many of them for the useful work they have done in overcoming active opposition or passive negligence on the part of the work-people. But, although the moral blame for neglect to maintain or use a guard may sometimes rest with the worker, the necessity of maintaining the legal responsibility, which is placed by the Act on the occupier, must be emphasised. The supervision of guards is a matter requiring daily attention, and however large the staff of factory inspectors, it is clearly impracticable for them to exercise this detailed supervision. Only persons who are in the factory from day to day can see that guards are properly maintained,

and unless the employer undertakes this duty, there are no means of ensuring that this important provision will be observed. Accordingly, the Act places the responsibility upon the ocupier and expects him to secure compliance with the legal requirement by discipline among his employees. It should be noted, however, that the affixing of notices or the giving of perfunctory instructions does not fulfil the employer's obligation : he is naturally exercises to see that his work-people turn out satisfactory work. And, if he shows himself determined to secure the use and maintenance of guards by a presevering use of his disciplinary powers, he can effect this object.

Finally, the occupier is reminded that the Inspectors are always available for consultation and in any cases of doubt or difficulty he should not hesitate to call for their assistance. They will continue, as heretofore, to pay periodical visits to every factory, and at these visits they will advise as to the suitability of the guards provided, indicate dangerous parts that may have been overlookd, discuss methods of guarding particular machines and, in general, assist the occupier to secure compliance with the various requirements of the old Act.

But, and this is a very important point for the occupier to note, *the requirements of the Act are absolute and are in no way dependent upon previous notice or warning from the Inspector.*

Fencing of Machinery

In regard to the fencing of machinery the general principle is that every part of the transmission machinery and every *dangerous* part of other machinery must be securely fenced, unless it is in such a position, or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced. All parts of electric generators, motors, rotary converters, and fly-wheels directly connected to them, are also subject to this requirement while all moving parts of other prime-movers, and fly-wheels directly connected to them, must be securely fenced irrespective of their position, and so must the head and tail race of a water wheel or water turbine. Prime-mover is defined as any engine, motor or other appliance which generates or otherwise provides power; and transmission machinery means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machine or appliance.

Large gear wheels, pulleys, belts, etc. are obviously dangerous when in motion, but *smooth polished shafting* can be just as dangerous, and many accidents happen because the danger is not appreciated. If loose clothing comes in contact with a shaft it will almost certainly wrap round the shaft and the wearer will be caught and whirled off his feet and either killed or seriously injured. The law requires, therefore, that transmission machinery and dangerous parts of other machinery shall be securely fenced so as to protect not only the ordinary worker employed in the factory every day, but also those engaged on temporary jobs such as painting or whitewashing or carrying out repairs to overhead electric lights and so on.

It will be noted that both transmission machinery, and dangerous parts of other machinery, must be securely fenced, and the question immediately arises: "What is the meaning of 'dangerous' in this context?" The new Act contains no definition and the question is one of fact. In an English High Court it was held that it meant "machinery from which, in the ordinary course of working it, danger may reasonably be anticipated, even if such danger would arise from negligence or some outside source". In practice most dangerous parts can at once be recognised by a person with ordinary imagination and experience after careful examination of the machine in motion.

Approaching Unfenced Machinery-Positional Safety.

In the past a good deal of latitude has been allowed as respects occasional approach to unfenced machinery in motion. Under the new Act, this will be much more strictly limited and controlled. If a part of the machinery is left unfenced, on the ground that it is safe by reason of its position, *effective steps must be taken by the factory occupier to prevent anyone from getting within the danger zone while the machinery is running.* There is, however, an exception strictly confined to the case of a person carrying out, while the part of the machinery is in motion, an examination of the machinery which it is necessary to carry out while the machinery is in motion, or such work as the mounting or slipping of belts, lubrication or other adjustment shown by the examination to be necessary while the machinery is in motion. A person so engaged may approach the machinery for any of these purposes, if:-

(a) all belts, screws or other projections and all gearing with which the person would otherwise be likely to come in contact are securely fenced so as to prevent such contact,

(b) the belt to be mounted or slipped is less than six inches in width and the joint is either laced or flush with the belt.

(c) the person doing the job is a specially trained adult male worker, wearing tight fitting clothing, and his name is entered in the prescribed register of workers as a person designated for such duties.

(d) any further precautions laid down in rules made by the Provincial Government are complied with.

The exception does not, as some people may imagine, permit every kind of work to be carried out on unfenced moving machinery provided that it is done by a person as specified in paragraph (c). To make the matter clearer the following test questions should be asked in regard to any proposed operation :-

1. Is it an examination which *must* be carried out while the part is in motion ?

Or 2. Is it a lubrication or adjustment, which is shown by such examination to be really necessary and must it be done while the part is in motion ?

Or 3. Is it a lubrication of, or slipping or mounting of belts on, transmission machinery, which cannot be deferred until the machinery is stopped ?

If one of these three questions cannot be answered unreservedly in the affirmative, the operation proposed is not legal.

When an accident occurs on an unguarded or badly guarded machine, factory occupiers sometimes plead that the machine has been in use for 10, 20 or 30 years and has never previously injured anybody. The assumption appears to be that if a machine has been in use for many years without causing an injury, it cannot really be dangerous- even if eventually it has killed somebody. This assumption which is contrary to common sense and to good safety practice is also contrary to the law. What the Court has to decide, if an oecupier is charged with a breach of Section 21 (1) (c), is whether at the time of the alleged offence the machinery was dangerous. If it was, its previous history does not affect the issue.

Training and Supervision of Young Persons working at Certain Machines

This important new Section lays dawn the principle that a young person must not work at certain dangerous machines unless :-

(a) he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and

(b) he has received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

It is left to the Provincial Governments to specify the machines to which this Section shall apply and in so doing they will no doubt bear in mind the many distressing accidents which young persons have had on power presses, milling machines, guillotines, platen printing machines and certain types of carding machines.

Additional Safeguards in connection with Transmission Machinery

1. A type of accident associated with overhead shafting is that caused by the dangerous practice of allowing belts to hang idly on a revolving shaft. Such a belt may easily lap on the shaft, and any worker in the immediate vicinity may be caught by it and dragged up around the shafting. This danger is met by a requirement in the Act that a driving belt, when not in use, shall not be allowed to rest or ride on a revolving shaft. Belt hangers or perches should therefore be provided, or the shaft may be sleeved or encased so that the belt can rest on the sleeve or casing.

2. It is obviously very desirable that there should be in every workroom some efficient means of cutting off the power promptly from the machinery. This may be done by fitting fast and loose pulleys, clutches or stop buttons and the provision of such stopping devices is required in every room where electricity is the motive power, and in the case of factories registered after the date of this Act, in all rooms whatever motive power is used. If such devices had been fitted in the past, many accidents to workers engaged in replacing belts on overhead pulleys, or carrying out repairs near overhead shafting, would have been avoided or the severity of the injuries reduced.

3. The dangerous practice of moving running belts by hand from one pulley to another and the unexpected starting of machines because of the belt creeping from the loose to the fast pulley have caused

many accidents. A recent example occurred in a leather works where large drums driven by power and revolving on a horizontal axis are used. A worker entered a drum to clean it and when so engaged, the drum turned and trapped his body between the edge of the opening in the drum and part of the fixed structure. His injuries were so serious that he died. Investigations showed that when the belt was on the loose pulley it could, and did in fact, overlap the fast pulley and cause the drum to revolve. The new Act requires that suitable mechanical devices must now be provided and used for moving driving belts, and they must be so constructed that they prevent the belt from creeping.

Fencing of Materials or Articles in Machines.

The materials or articles being worked upon in a machine may, when in motion, be quite as dangerous as parts of the machine itself. For example, the stock-bar of a lathe, that is the long bar of metal which passes through the spindle of a hollow spindle lathe, presents the same danger as a revolving shaft, and a worker's clothing or hair are liable to be entangled on it and cause serious or even fatal injuries. All these bars must now be securely fenced by enclosing them in a metal tube or by other equally effective means.

Self-acting Machines

Sometimes a self-acting machine, such as a spinning mule or a metal planing machine, is so placed that when it runs outwards or inwards to its full extent there is very little space left between it and the wall, or a girder, or another machine. If a worker happens to be in that space he is likely to be trapped and severely injured, and in fact many such accidents have happened, and some have proved fatal. To reduce the risk of similar accidents the new law states that no traversing part of a self-acting machine, and no material carried on it, shall be allowed to run within a distance of eighteen inches from any fixed structure, if the space over which it runs is one in which a person is liable to pass.

In the case of machines installed before the 1st April 1949 which do not comply with this requirement, the Chief Inspector has power to permit the continued use of the machine subject to such conditions for ensuring safety as he thinks fit to impose. He might, for example require the occupier to fence or box-in the space so that it is physically impossible for a person to pass. The emphasis here is on the word

"physically impossible" and it should be carefully noted that the Chief Inspector is not likely to accept a flimsy guard or barrier which could readily be removed or broken.

Cleaning etc. of Machinery by Women or Children

The requirements of the new law are more stringent than the existing law. In future a woman or child will not be allowed to clean, lubricate or adjust any part of machinery in motion or to work between moving parts of machinery in motion. Furthermore, the Provincial Governments have power to extend this prohibition to all persons irrespective of sex or age in any specified factory or class or description of factories.

Construction and Sale of New Machinery

For some years the designers and makers of machines have recognised that proper safeguarding of dangerous parts should be embodied in the design. Unfortunately, this has not always been done. The absence of adequate guarding on new machines has often resulted in accidents to workers, and the purchasers of such machines feel that they have ground for complaint against the makers. The Act introduces a new principle, in that in the case of the new machinery intended to be driven by mechanical power, certain requirements as to the sinking or guarding of set-screws, gearing etc. must be complied with. When the machine is in a factory, the occupier of the factory is responsible for seeing that this is the case; but it is made an offence for any person to sell or let on hire (or as agent for the seller or hirer to cause or procure to be sold or let on hire) for use in a factory in India a machine which does not comply with the requirements,

Hoists and Lifts

Hoists and lifts are responsible for numerous accidents and the new law requires, amongst other things, that every hoist and lift should be properly constructed and maintained, be examined at least every six months by a competent person, have the hoist well protected, and the doors for the landing openings fitted with interlocking gates; additional safeguards, such as interlocking cage gates are required where persons are carried, whether with goods or otherwise. Provision has, however, been made for exemption to be given in certain cases from some of these requirements.

Cranes and Other Lifting Machines

Important provisions are contained in the new Act relating to the use and maintenance of cranes and other lifting machines. Failure of parts of such machines is another source of many accidents and the new Act now says that all parts must be of good construction and be properly maintained; that they must be thoroughly examined at least once a year by a competent person and that they must not be overloaded. So many workers have been killed or injured by being struck by travelling cranes that a clause has been inserted in the Act requiring effective measures to be taken to ensure that a crane does not approach within 20 feet of any person working on or near the wheel track of the crane. Merely to warn the crane-driver is not sufficient; stop-blocks, detonators and/or cut-outs are more likely to be effective and one or more of these methods should be used.

Examination of Plant and Machinery by a "Competent Person"

In certain Sections of the Act reference is made to a "competent person." For example, Section 28 states that.....every hoist and lift shall be thoroughly examined by a competent person ..... and Section 29 that.....every part of a crane or other lifting machine shall be thoroughly examined by a "competent person" ..... Occupiers will naturally enquire—who is a competent person for the purpose of examinations under the Act ?

The question whether a person who makes an examination is competent for the purpose depends on the circumstances of the case and it is not possible to give an authoritative definition. It may be said, however, that what appears to be contemplated is that the person should have such practical and theoretical knowledge and actual experience of the type of machinery and plant which he has to examine as will enable him to detect defects or weaknesses which it is the purpose of the examination to discover, and to assess their importance in relation to the strength and functions of the particular plant or machinery.

While the occupier of a factory is responsible for selecting a "competent person", the Act does not prohibit a firm from appointing one of their own staff, for example, their chief engineer, provided, of course, that he is competent.

Precautions against Dust Explosions

Amongst the more important new provisions are those directed against the dangers which arise from inflammable dusts, gases and vapours produced or used in industry. Most people know that coal dust is explosive and that this leads to many disasters in coal mines, but it may be a surprise to some to learn that other familiar domestic articles—such as flour, sugar and starch—are also explosive if they are ignited when in the form of a dust cloud. Some of the worst factory disasters have been due to dust explosions. Hence, where inflammable dusts are produced by grinding or other processes, the new Act requires special precautions to be taken, such as enclosing the plant, keeping the rooms free from dust and keeping away naked lights.

Welding, Soldering, etc., on Plant, Tanks or Vessels.

Accidents often happen when people attempt to repair empty tanks and other vessels which have contained petrol or other inflammable liquids. In order to prevent these, the law now requires that, before any welding, soldering, brazing or cutting operation, which involves the application of heat, is carried out on any plant, tank or vessel which has contained any explosive or inflammable substance, all practicable steps must be taken to remove the substance and fumes or to make them non-explosive. Petrol and similar vapours can generally be removed by steaming and ventilating a tank or drum.

Confined Spaces where Dangerous Fumes are Liable to be Present

New provisions are introduced which apply to a wide variety of places and plant, such as chambers, tanks, pits and pipes where dangerous fumes are liable to be present to such an extent as to involve the risk of persons being overcome by the fumes. Requirements are laid down as to (a) the provision of effective means of egress such as a manhole of adequate size, (b) prohibiting the use, inside the space, of hand or portable electric light of voltage exceeding 24 volts, and (c) prohibiting the use of any lamp or light, other than those of flame proof construction, if the dangerous fumes are likely to be inflammable. The Act also prohibits persons from entering such confined spaces unless certain precautions are taken, such as (a) the taking of necessary steps to remove fumes and to prevent fumes from entering and (unless certain conditions are fulfilled) the wearing of a life belt and a breathing apparatus, (b) the provision and periodical inspection of breathing

apparatus, reviving apparatus, and belts and ropes, (c) the training of persons in the use of the apparatus and in artificial respiration. Provision has been made to grant exemption in certain cases and to specify minimum dimensions of manholes.

Protection of Eyes

A great many accidents causing eye injuries occur in factories every year. A large proportion of these accidents arise from the use of hand tools, lathes and grinding wheels. Under the new Act power has been given to Provincial Governments to prescribe the provision of effective screens or suitable goggles for the protection of persons employed on certain processes or in the immediate vicinity of the processes. Also, a new Section in the Act expressly requires the workers to use protective devices. Very often the individual worker seems obsessed with the idea that screens and goggles, for example, are not necessary in his case. An interesting instance of this came to light recently. Two men were grinding metal articles on the two emery wheels of a double-ended grinder. One was wearing goggles but the other man's goggles were lying in a box in front of the machine. When asked why he was not wearing them like his mate, he replied, "Oh, he's only got one eye" The first man had in fact lost his eye when not wearing goggles on this grinding work.

Revolving Wheels, Vessels, etc.

Anybody who has seen the havoc wrought by a burst fly-wheel or who has personal knowledge of an accident due to the failure of an abrasive wheel, etc. will readily agree that the Section of the Act dealing with revolving wheels and vessels is an important one. This Section lays down that effective steps shall be taken to ensure that the safe working peripheral spead of certain wheels and vessels, such as, fly-wheels, discs, pulleys, baskets, abrasive wheels, grindstones, etc., shall not be exceeded. It also requires, in the case of abrasive wheels and grindstones, that a notice of the safe speed shall be permanently affixed to each machine.

Pressure Plant

Precautions in respect of machinery or plant working at a pressure above atmospheric pressure are obviously necessary when one considers the danger of an explosion or failure of the plant in a crowded factory. The Act, therefore, requires precautions to be taken to ensure that

the safe working pressure of any such plant is not exceeded. Power has been given to the Provincial Governments to make rules specifying details of examination and test of pressure plant and to prescribe the provision of such other safety measures as may be necessary. All this is in accordance with modern industrial practice and the precautions are now taken as a matter of course.

Precautions against Falls

Persons falling on the flat or through openings in the floor or into pits or sumps, etc. account for a large proportion of the annual total of non-machinery accidents. Provisions in the new Act are designed to reduce this total by requiring floors, stairs, gangways, etc. to be kept in good order and handrails to be fitted where necessary to secure safety. Pits or tanks or openings in floors which are a source of danger must be covered or securely fenced, and there must be safe means of access to every place at which any person is at any time required to work.

Lifting Excessive Weights

Another new provision is that no person shall be employed in a factory to lift, carry or move any load so heavy as to be likely to cause injury to him or her. It also empowers the Provincial Government to make Rules prescribing the maximum weights that may be lifted, carried or moved by persons employed in factories or in any process carried on in a factory.

Fire—Means of Escape, etc.

The law as to safety provision in case of fire is very much strengthened. The general principle is that every factory must be provided with adequate means of escape in case of fire, and that if a factory is not so provided an Inspector may serve on the Manager an order specifying the measures which should be taken and requiring them to be carried out before a specified date. The Act then goes on to lay down certain requirements in detail which may be summarized briefly as follows:—

Doors.—Doors of rooms must not be locked or fastened so that they cannot be easily and immediately opened from the inside and, unless they are of the sliding type, they must open outwards.

Fire Exits.—All exits, other than those in ordinary use, must be marked in red letters or by other effective sign.

Audible Warning.—Clearly audible means of giving warning in case of fire must be provided.

Free Passage.—Passage way to fire exits must be kept clear and free from obstructions.

Fire Instruction.—In the following cases (1) where in any factory more than twenty persons are employed in the same building above the ground floor, (2) where in any factory explosive or highly inflammable materials are stored or used, effective steps must be taken to ensure that all the persons employed are familiar with (a) the means of escape and their use, and (b) the routine to be followed in case of fire.

The Provincial Government may make Rules specifying the nature and amount of fire-fighting equipment to be provided in a factory and the means of escape from a factory.

Safety of Buildings, Machinery, etc.

If it appears to an Inspector that any building, part of a building, or part of the ways, machinery or plant in a factory is or may be dangerous to human life or safety, there are three courses of action open to him :—

1. **Imminent Danger.**—If danger appears to be imminent he may serve on the factory manager an order in writing prohibiting its use until it has been repaired or altered.

2. **Danger not Imminent.**—If danger appears to exist but it is not imminent he may require the factory manager to adopt certain measures before a specified date.

3. **Possibility of Danger.**—If danger is possible he may require the factory manager to furnish drawings, specifications and other particulars or to carry out certain tests and to inform the Inspector of the results.

Penalty for Offences

If there is a contravention of the Act, or of any Rule or Order made under the Act, both the factory occupier and the factory manager

may be held guilty of an offence and punished with imprisonment for three months, or with a fine of five hundred rupees, or with both. And if the contravention is continued after conviction, a further fine of seventy five rupees may be inflicted on them for each day on which the contravention is continued.

In certain circumstances workpeople are also liable to imprisonment and a fiine but, in general, responsibility for securing compliance with the Act and Rules rests with the occupier and factory manager.

Powers of Provincial Governments

Wide powers have been given to the Provincial Governments to make Rules on matters which may be expedient to give effect to the safety provisions of the Act. *e. g.*, power to require the provision of automatic guards, further fencing of particular machines or articles in motion in machines, and for stopping machines in case of danger, etc. They also have power to grant exemption from compliance with certain requirements of the Act in cases where such compliance is unnecessary or impracticable.

Appendix II.

The statement showing number of workers employed in various groups of industries in 1943.

Extent of employment in various industries.

Industry.	1943.
Mines.	
1. Coal	213,096
2. Manganese	24,271
3. Gold	13,578 *
4. Mica (a) Mining	61,460
(b) Manufacture	140,000
5. Iron Ore	9,347
6. Rock Salt	1,692 *
7. Mineral Oil	11,691
Plantations.	
8. Tea	926,461 - (1942)
9. Coffee	115,378 - (1943)
10 Rubber	46,887 - (1942)
Factories.	
11. Cotton	502,650
12. Jute	302,304
13. Silk	5,473
14. Woolen	14,167
15. Dockyards	45,000
16. Engineering (Total)	(280,662)
(a) Electrical	22,688
(b) General	110,227
(c) Railway workshops	39,477
(d) Coach Building and Motor Cars Repairing	20,626
(e) Ship Building and Engineering ..	35,087
(f) Others	52,557
17. Cement	16,010
18. Matches	10,412
19. Paper	18,606

Industry.		1943.
20.	Carpet Weaving	1,657
21.	Coir Matting	70,000
22.	Tanneries & Leather goods	33,733
23.	Potteries	4,836
24.	Printing Presses	44,534
25.	Glass	18,328
26.	Chemical and pharmaceutical Works ..	68,484
27.	Shellac . .. Between	25,000 – 30,000 *
28.	Tobacco	515,423
29.	Sugar	93,014
30.	Cotton Ginning & Bailing	117,311
31.	Rice Mills	51,385
32.	Transport Services	
	(a) Tramways	15,000
	(b) Buses	90,000
33.	Railways	889,036
	Other Types of Labour	
34.	Port Trusts	70,705
35.	Municipalities	54,352
36.	Central P. W. D.	150,000
37.	Rickshaw Pullers	40,882

* For 1944.

Appendix III

Critical Examination of the Bill.

While the bill was on the anvil of the legislature a prominent workmen's organisation namely Indian Federation of Labour submitted a number of valuble suggestions to amend and improve the Bill. We take this opportunity to reproduce a summary of the same with a view to helping the readers examine the Act critically:—

(*The Indian Federation of Labour was requested by the Ministry of Labour to send them its view on the Factories Bill. A Summary of the Comments of the Federation on the Bill is given below*)

The Indian Federation of Labour generally welcomes the Bill to consolidate and amend the law regulating labour in factories and considers it an improvement on the existing legislation. The Federation is in agreement with much of the criticism of the present Act given in the statement of objects and reasons of the Bill, particularly that the present Act leaves too much to the rule-making power of the Provincial Government. The present Bill itself, we feel suffers to a certain extent from this defect. Some important provisions would be ineffective unless the Provincial Governments make rules. Many provisions, e. g. Section 14 (ventilation and temperature), section 87 (dangerous operations) etc., are too vague and general to be of much use. It will be very desirable to make them specific.

Provincial Governments have been given too many powers of exemption which would render some of the most essential and important provisions of the Bill ineffective. Some new clauses have been suggested by us for giving better effect to the aims and objects of the Bill like provisions for ensuring sanitary surroundings, provisions for ensuring safety of operations of lifts, hoists and cranes, licensing of home workers, etc. In regard to creches, we suggest that instead of making them a responsibility of an individual employer, it would be better to establish them in working class localities out of a tax on industry. Young persons certified to work as adults should be provided with educational facilities during working hours.

The definition of a factory is suggested to be made wider and the reduction in hours of work to 44 per week is suggested.

The following are our concrete suggestions to amend the various clauses of the Bill:—

Definition of a Factory.

The definition of a factory as given in Section 2 (m) of the Bill includes premises where either (1) ten or more persons work and where a manufacturing process is carried on with the aid of power or (2) where twenty or more persons are working.

The definition of a factory should cover all premises where a manufacturing process is carried on and where more than ten workers are ordinarily employed, whether mechanical power is used or not.

The definition of a factory, as suggested above, would by no means be very wide as compared to the one given in the U. K. Act or legislations of other countries. The U. K. Act does not insist on the employment of any minimum number of workers but as the word "persons" is used it implies employment of more than one person. The definition of a factory given in "An Act to consolidate and amend certain Enactments of the General Assembly relating to factories" (12 Geo. V. No.42, dated 6th February, 1942) of New Zealand provides that any building or place in which two or more persons are employed in any handicraft or manufacturing process constitutes a factory.

It is impossible that some employers may try to evade the provisions of the legislation by splitting up their larger factories into smaller parts employing less than ten persons. It will therefore be desirable to safeguard against this possible evasion by providing that where the operations of a manufacturing process are carried on in several adjacent buildings, or places, all of them shall be included as one for the purposes of this definition of a factory in the Act, notwithstanding that they may in fact be separated or intersected by a road, street or stream or by any building, place or space not forming part of the factory.

Power to exempt Factories.

Section 4 of the Bill empowers the Provincial Government to exempt a factory from the provisions of the Act, if by reason of a change of occupier or change in the manufacturing process the number of workers is less than prescribed in Section 2(m).

The Federation is of the opinion that such a provision should be deleted as it is superfluous. It is also desirable that the provisions of the Factories Act should continue to apply in a factory though tem-

porarily the number of workers may have been less than ten. If the number of workers employed continues to be less than the prescribed minimum for one year it will automatically cease to be a factory under the provisions of Section 2(m).

Section 6 gives power to the Provincial Government to exempt any factory from the provisions of the Act during public emergencies.

It is inadvisable to Provide for the suspension of the Act in the event of a public emergency as such a provision is very handy and sometimes lightly used. This may defeat the very purpose of the legislation. However, if there is a public emergency, special legislation can always be enacted either through an ordinance or legislative enactment, to suspend any existing legislation.

It will be be of interest to note that Labour Legislation Committee of Burma, which recently published its First Report on the Factories Act have also disapproved of a provision to exempt any factory from the provisions of the Act. The Report says; "The Committee is of opinion that special legislatson, if required can be enacted during a the public emergency". The Committee has not included any such provision in the draft Factories Bill prepared by it for Burma.

Approval, Licensing and Registration of Factories.

Section (7) deals with approval, licensing registration of factories and empowers the Provincial Government to make rules for this purpose.

The Federation has suggested that it should be obligatory on the part of the Provincial Governments to make rules for the registration of factories and it should not be left merely to their discretion.

It should be prescribed that as soon as practicable after the receipt of application the inspector or any other registering authority shall visit and examine the intended factory in order to satisfy himself that it is suitable for the purpose it is to be used and also that it is in accordance with the plan.

Sub-section (2) of Section (7) provides that if within three months from the date on which the application for registration is sent, the permission applied for is not communicated, it will be deemed to have been granted. Although it is desirable that applications for registration should be disposed off quickly, a provision like the one under reference is most undesirable. It would encourage corruption and inefficiency and legalise negligence. A small delay on the part of the registering authority would

enable an otherwise defective factory to be registered and would adversely affect the lives and health of hundreds and thousands of workers who may be employed in it from time to time.

The Inspecting Staff.

Section 9 dealing with inspectors should be suitably amended to provide that a definite number of women Inspectors would be appointed for each area. It is obvious that women workers could more frankly speak to a lady inspector than to a male one. A lady inspector is also expected to understand better the problem of women and children and would undoubtedly be and asset to the inspectorate.

Health.

It is undesirable to give Provincial Governments power to exempt factories from health provisions of the Act. They should at the best have the power to suggest alternative methods for keeping the factory in a clean and sanitary condition.

The provisions of Section 14 regarding Ventilation and Temperature are too general. It should be more specific. As regards temperature of the room the reasonable standard may be set by normal body temperature. In summer the temperature would need to be brought down whereas in winter arrangements for keeping the room warm and comfortable should be provided.

The minimum provision of 350 cubic feet of air is quite low. This is lower than in a cold country like United Kingdom where it is 400 cubic feet. The Labour Legislation Committee of Burma has suggested 500 cubic feet of space and it should be considered very minimum in Indian conditions.

Provisions for ensuring sanitary surroundings.

Sometimes the sanitation of a factory is very much affected by the existence of any nuisance or other sanitary defect in any building or yard adjoining the factory. It will be very desirable to give power to the Inspector or the Provincial Government, to require the owner or occupier of such building to effectively abate such nuisance or amend such defect within a time named in the requisition. Penalty can be provided for failure to comply with the requisition. Such a provision already exists in the legislation of New Zealand.

(Refer Section 50 of an Act to Consolidate and Amend certain

enactments of the General Assembly relating to factories, 12 Geo. V. No. 42 dated 6th February 1942).

Safety.

In addition to the prohibition of women or children near cotton-openers, it will be very desirable to extend the prohibition to certain other work on machine which are in the opinion of the Inspector or the Provincial Government of a dangerous character. Provisions can also be added to ensure proper training of young persons and their supervision while at work before permitting them to work on such dangerous machines. The provisions can be on the lines of Section 21 of the U. K. Factories Act. In the case of hoists, lifts and cranes it is undesirable to give power to the Inspector or the Provincial Government to exempt factories from the provisions of section 28 as it may seriously endanger the life of the employees.

Additional provisions for testing and thorough examination, by a competent person, of chain, rope or lifting tackle before use for the first time should be made in the Bill. The examining authority should specify the safe working load and the signed report should be kept available for inspection. A table showing the safe working loads of every kind and size of chain, rope or lifting tackle meant for use should be prepared. In the case of a multiple sling the safe working load at different angles of the legs should be prepared.

All chains, ropes and lifting tackles in use should be thoroughly examined by a competent person at least once in every period of six months or at any interval prescribed by the Inspector of the Provincial Government.

Every chain and lifting tackle, except a rope sling, should, unless of a class exempted by the Inspector upon the ground that it is made of such material or so constructed that it cannot be subjected to heat treatment without risk of damage or that it has been subjected to some form of heat treatment (other than annealing) approved by him, be annealed at least once in every 12 months.

Welfare.

Provision of facilities for storing clothing not worn during working hours and for drying of wet clothing should be compulsory and should not be left to the discretion of Provincial Government. They may however prescribe the standards for such a facility.

In addition to the provision of a rest room, the employer should also be required to provide for a place where workers could take their meals. Such a place can be somewhere near the canteen for those who bring their food from home. The workers should be prohibited from taking their food inside the work-rooms, particularly those in which lead or arsenic or other poisonous substance is so used as to give rise to any dust or fume. In such rooms even drinking water would be injurious and the workers should not be allowed to remain there during rest intervals.

Creches

We would suggest that instead of making the provision of creches the responsibility of any employer, it would be much more desirable to raise funds by taxes on industry and then make a statutory public corporation, like the one envisaged in the Workmen's State Insurance Act responsible for organising creches and day-nurseries in living quarters. The reasons for the above suggestion are very similar to those advanced for the replacement of the Workmen's Compensation Act by a system of Compulsory Sickness Insuranee. It is possible for management to evade the provision by employing, say 49 women. On the other hand, the employers always throw the burden of the expenses on the women themselves by giving them lower wages. If above suggestion is accepted, women even in small undertakings will also benefit by it and the service would become a proper social service rather than remain a privilege of a small minority. Such a service would relieve the girls of the family for the care of babies and infants, as is the general custom, and enable them to take advantage of facilities for education that may be available.

Welfare Officers

The Welfare officers are generally engaged more in anti-trade union activities than in actul welfare work. This perhaps happen because of their being too closely associated with the management. The recent report of the Waterfield Committee of Bombay has made some valuable suggestions in this regard. One of the suggestions is that the Welfare Officer should be away from the watchful eye of the Manager and should not be removable by him alone without the concurrence of the Labour Commissioner. It is likely that if a Welfare Officer really devotes sincerely to the work that he is expected to do, he may not be able to retain very pleasant relations with the management. It is necessary to protect such an Officer. The section dealing with the subject should therefore be suitably amended to provide that the Wel-

fare Officer would be appointed by the Labour Commissioner and would be under his discipline and control. The employer of course would be required to pay his salary. Only in such circumstances labour welfare officers would be able to do real welfare work.

It will be desirable to require the factories to constitute a Welfare Fund and associate representatives of workers for the management of welfare activities. The fund can be created either by the contributions of a certain percentage of profits or a certain fixed amount per every worker employed by the factory.

Other Welfare Provisions.

It will be desirable to prohibit young persons from lifting or carrying of heavy weights, so heavy as to cause injury to them. Female young persons should be prohibited from employment in any part of the factory where the process of melting or blowing glass is carried on, or the process of annealing glass, or the evaporation of brine in open pans is carried on.

It will also be desirable to prohibit employment of women or young persons in any of the following operations:—

(a) Work at a furnace where the reduction or treatment of zinc or lead ores is carried on;

(b) The manipulation, treatment or reduction of ashes containing lead, or the desilverising of lead;

(c) The manufacture of an oxide, carbonate, sulphate, chromate, acetate, nitrate or silicate of lead;

(d) Mixing or pasting in connection with the manufacture or repair of electric accumulators;

(e) The cleaning of work-rooms where any one of the processes aforesaid are carried on;

The prohibitions as suggested already exist in most of the countries of Europe and it is very desirable to incorporate them in the Indian Factories Bill.

In the weaving factories where the weaving of cloth is carried on by shuttles which are not capable of being threaded or are readily threaded by suction of the mouth, the Provincial Government should be empowered to make regulations for such factories.

Housing

It will be desirable to empower the Government to require employers to provide housing for their workers. Large number of workers live far

away from places of work and experience considerable difficulty in reaching the factories where they are employed. It is difficult for them to secure accommodation, which is often insanitary and overcrowded. The Labour Legislation Committee of Burma has also recommended regulation of housing accommodation.

Working Hours

The hours of work proposed in the present Bill are in accordance with the Hours of Work Convention of the I. L. O. passed nearly thirty years ago. Unfortunately, for a number of years it could not be enforced in this country and was recently enforced. However, much time has elapsed since the Convention was passed and the hours of work in most industrial countries are between 40 to 44 per week. The World Federation of Trade Unions has demanded a 40-hour week throughout the world. Even in a country like Burma, a 44-hour week has been recommended by the Labour Legislation Committee. The usual arguments of the employers, like the increase in the cost and fall in production, were carefully examined by the Labour Legislation Committee of Burma. In para 71 of their First Report they observe:

'The Chairman and the Government representatives took the view that the result of the Committee's enquiries tended to show that the effect of the proposal (i. e., reduction in hours of work from 48 to 44 per week) would not be so drastic as appeared at first sight. There was ground for hope that such restrictions on working hours would lead to more efficient organisation and use of labour, which would tend to lessen any decrease in output, and they also feel that the change would make for peace in industry and remove one of the most potent causes of the strikes and unrest."

The other grounds for the recommendation of the Burma Labour Legislation Committee were climatic conditions in Burma, difficulties of transport to and from work, and the need for giving the workers reasonable leisure. All these are applicable with equal if not more force in India. There is therefore a strong case for the reduction of hours of work in India, at least to the extent already accepted by the Labour Legislation Committee of Burma.

Night Shift.

Night work involves greater strain on the human and nervous resources of a worker than day work. It will be desirable to provide for extra allowance for workers employed in night shift. This practice already

exists in many factories. In addition to extra payment, it will be very useful if the employers are required to give free tea or coffee to workers to enable them to keep themselves alert and shake off sleep.

Powers to make exempting rules.

There are no vaild reasons for authorising the Provincial Governments to exempt factories from the provisions of Section 51, 52, 54, 55 and 56 as suggested in sub-section (2) b, c, d, e, f, g, h, of the Bill. Even preparatory or complimentary work can be carried on by a number of shifts working according to the provisions of the Act. It is undesirable to differentiate workers according to intermittent or continuous work. Even a worker on an essentially intermittent work is at the disposal of the employer for all the time. His time is not his own when on duty.

The work, which for technical reasons, must be carried on throughout the day can be done by a suitable arrangement of shifts and does not call for any exemption.

Sub-sections 2 (f) and 2 (g) of section 64 introduce the distinction between perennial and seasonal factories from the back door. The clause is inconsistent with the Statement of Objects and Reasons appended to the Bill which says'..... the present distinction between seasonal and perennial factories which has little justification has been done away with.'

Work in engine-rooms or boiler-houses or in attending power-plant is more arduous and exhausting and there are strong grounds for reductions of hours of work for workers engaged there. Exemption from even the ordinary provisions of the Factories Act is unthinkable.

Employment of young persons.

The medical examination and securing of a token should not entail any expense to the child or young person or his parents. This should be specifically stated in the Bill.

It will be necessary to lay down basic physical standards to be attained before a child may be certified fit to work. In the case of a young person, before he is certified fit to work as an adult, as is provided by sub-section 2(b) of Section 70, the standards might concern height, weight in comparison to height, muscular strength and physical maturity.

Education for children.

A provisions requiring the employer to make arrangements for the education of children employed by him in or near the factory premises should be made. Such a provision is necessary as these children would

be deprived in such a young age of all facilities for education provided by the state or private institutions.

In the case of young persons certified to work as adults, it would be necessary to insist on the right to free education during working hours in order to enable them to continue their education.

Holidays with Pay.

Holidays with pay should be available to all workers in factories, though their number may be reduced in case of factories working for less than one hundred and eighty days in the year. Any interruption in service brought about by an illegal strike would deprive the worker of the benefits of holidays with pay. The Industrial Disputes Act provides the penalty for a worker joining an illegal strike. It is very unjust and inequitable to punish several time for the same offence. In this case punishment would be too harsh. Even a day's absence on account of an illegal strike would deprive a worker from enjoying ten days' holidays earned after a service of full 12 months.

There should be no exemption from the provisions of holidays with pay. If the leave rules applicable to workers in factory provide substantially the same benefits as required by this chapter, then obviously there should be no difficulty in complying with the Act. Too many powers given to Provincial Governments to order exemptions are neither desirable nor healthy. Past experience does not allow one to welcome such powers.

Certain Provisions of the Act to Apply to Other Premises.

Section 86 of the Bill empowers the Provincial Governments to apply certain provisions of the Bill to any premises by notification in the official Gazette. The provisions that can he so applied are dealing with accumulation of dirt and cleaning of floor lighting and ventilation, latrines, fixing hours of work and employment of children.

The provisions stated in section 86 should be expanded to include the application of Section 12 (1) (c) (effective drainage), Section 13 (disposal of wastes and effluents) and section 17 (overcrowding) to establishments covered by section 86.

Dangerous Operations.

It will be much better to specify dangerous operations in the Act itself, on the basis of past experience. The power given to Provincial Government is likely to remain merely on paper, and seldom used. The

cheif defect of the Factories Act of 1934 is said to be that it left too much to the rule-making power of the Provincial Governments. The position has not been satisfactory and it is inadvisable to make the experience again particularly in such an important subject. It is suggested that whatever operations are known to be hazardous should be specified and power to be given to Provincial Goverments to specify any others which they think proper.

Display of Notices.

In addition to the notices specified in the Bill it will be desirable to xhibit the following information on the notice board :

(a) The name and address of the inspector

(b) The name and address of the examining surgeon

(c) The clock by which the period of employment and intervals for meals and rest in the factory are regulated.

(d) Such other particulars as are prescribed by the Inspector or the Provincial Government, such as the procedure to be observed in order to claim compensation for accident or sickness benefit etc.

A printed copy of all such regulations or notices shall be given by the occupier to any person affected, on his application.

Home Workers.

It is possible that employers may try to evade the provisions of the above legislation by giving a good deal of work to young workers who may not come under the Factories Act. This danger is particularly great in the case of cottage industries, many of which would be covered by the Act. The tendency to take advantage of the helplessness of home workers should be checked. On the other hand the conditions of work of home workers are proverbially most unsatisfactory and deserve attention. It will therefore be desirable to make the following provisions in the Bill.

(1) The occupier of a factory shall not let or give out work of any description to be done by any person elsewhere than in a registered factory, unless that person is the holder of a license issued by the Inspector.

(2) The occupier shall not at any time employ a greater number of persons holding licenses under this section than one for every ten or fraction of ten persons for the time being employed by the occupier in the factory;

(3) Every application for license seall be made by the occupier to the Inspector and shall be accompanied by such fee as may be prescribed;

(4) No such license shall be granted by the Inspector unless he is satisfied:—

(a) that the person to whom the application relates is in innecessitous circumstances or is for special reasons unable to work in a factory; and

(b) that the place where the work is to be done is suitable; and

(c) that the rate of remuneration to be paid for the work is substantially equivalent to or is higher than the rate that would be payable if the work were done in the factory.

The above conditions would amply safeguard the diversion of work from the factories to home workers and the consequent evasion of the provisions of the legislation.

Subject Index

ERRATA

Page	Line	Correction
7	25	Read "below" for "between"
22	27	Read "2 (l)" for "2 (e)"
51	last para 2nd line	Read "proportion" for "proposition"
72	2nd para 3rd line	Read "Committee "It" for Committee It
72	2nd para 7th line	Read " the view expressed by that Committee, that even apart from" after the words "we fully endorse"
100		*The chapter head-not contained in para one, may please be read as the head-note of Chapter VII on page 93.*
122	Sec. 100 (1) 1st line	Read "factory is a firm" for "factory in a firm"
123	2	Read "is" before "so"
135		Read first three lines as Comments for Sec. 119 and the eighth line i. e. "This is a new clause "as Comments for Sec. 118.